Climbing the Great Drywall of China

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CHINESE DRYWALL:

OUTLINE OF THE ISSUES

I. THE ISSUE DEFINED

A. Overview of the Problem

- Drywall is the surface of the walls and ceilings in most homes built after WWII.

- Drywall imported from China in 2004-2008 seems to have certain chemical properties that cause the material to degrade in humid climates.

- In such climates, the Chinese drywall has been found to emit sulfur, which, in turn, causes metal decay and strong odors.

    - PROPERTY DAMAGE: Sulfur "off-gassing" is alleged to rot copper piping and electrical wiring in homes, as well as destroying chrome-plated faucets, turning shower heads to black, damaging computers, phones, microwaves.

        - It is estimated to cost $100,000 to pull out defective drywall and replace corroded electrical wiring in an average-sized home.

    - BODILY INJURY: Sulfur "off-gassing" is alleged to cause nosebleeds, rashes, respiratory illness and headaches, scratchy throats.

        - As of August 2009, three has been no documentation that the Chinese drywall is an environmental hazard, a human health hazard or is threatening to water supplies. According to Henry Slack, the indoor air program manager for the U.S. Environmental Protection Agency's Region 4 office in Atlanta.

        - **NOTE:** Throat irritation was experienced by the Consumer Products Safety Commission task force members who travelled to these homes in March 2009 to investigate. This may be significant.

B. How Much? The Extent of the Problem

- More than 500 million pounds of Chinese Drywall imported to US during post-Katrina housing boom from 2004 to 2008. The Associated Press derived this from shipping records in May 2009. Navigant Consulting arrived at similar numbers in July 2009, citing other data.

- Prior to this construction boom, the construction industry did not import significant amounts of drywall from China.

- It is believed that more than 100,000 homes may have been built during that period with the defective drywall.
    - **NOTE:** This is an often-cited, but questionable statistic. In reality, there is no way of knowing whether the product was used all in *new* homes (i.e. fewer total homes impacted) or whether the drywall was used in remodeling of existing homes (in which case greater number of homes impacted).
- As of August 10, 2009, more than 800 complaints from 23 states had been filed at the Consumer Product Safety Commission's Drywall Information Center.
- The overwhelming majority of the Chinese drywall was imported to the U.S. in 2006.
- Total Chinese drywall losses could be $15-$25 billion, according to Towers Perrin.
    - $8-$10 billion for indemnity
    - $5-$10 billion for plaintiff and defense legal fees
    - Uncertain damages with regard to personal injury claims

C. Who are the companies facing underlying liability?

1. Manufacturers:

    a) Taishan Gypsum Co. Ltd. - a Chinese manufacturer

    b) Knauf Plasterboard Tianjin Co.:

    - Chinese manufacturer
    - ***Claims to have tested its drywall and found no harmful effects.***
    - This company accounted for about 20% of Chinese drywall imported into US from 2004 to 2007. *August 6, 2009 WSJ.*

    c) Knauf Gips KG - German corporation that owns Knauf Plasterboard Tianjin Co.

2. Builders:

a) Lennar Corp: Major builder has set aside almost $40 million to fix 400 houses in Florida. *WSJ, August 6, 2009, citing July securities filings.*

b) The Dragas Companies: Virginia company that has begun replacing Chinese drywall that it used to build about 70 homes in a subdivision near Chesapeake, Virginia. As of last week, 16 families had already returned to their remediated homes.

- This has led to investigation by law firms claiming that builders are using one-sided remediation agreements to inadequately fix some of the problems, while limiting their future liability.

- Porter-Blaine Corporation: Company that Dragas used to install the Chinese Drywall.

D. Causation? Where's the proof?

1. Three Sources of Gypsum at Issue

a) A mineral coming from mines in China.

- A Consumer Product Safety Commission report cites gypsum excavated from a mine in China that is known to produce a smelly and off color mineral. *WSJ, August 6, 2009.* Specifically, the LuNeng mine in ShanDong province seems to be a major source of the materials used.

b) Residue from coal-fired power plant air pollution scrubbers

c) **Phosphogypsum**: A radioactive product of phosphate fertilizer production. This was banned for use in drywall in the U.S.

- However, a *July 2009 investigative report by the Los Angeles Times* claimed that phosphogypsum is commonly used in Chinese drywall.

- However, testing by U.S.E.P.A. and the State of Florida indicated no radiological hazard from Chinese drywall—so far.

2. May 2009 U.S.E.P.A. Drywall Sample Analysis Testing

   - U.S. drywall purchased in NJ was tested, and showed no sulfur.
   - Chinese drywall samples showed 83 ppm and 119 ppm sulfur.
   - Strontium was detected at 244-1130 ppm in the US samples, but 2570-2670 ppm in the Chinese samples.

3. November 2006 report of the Center of Toxicology and Environmental Health on behalf of Knauf Plasterboard Tianjin. Knauf claims the tests showed no harmful effects from the "off-gassing" associated with its drywall.

4. December 22, 2008 study released by ENVIRON International on behalf of Lennar Homes.

   - Found no link between sulfur compounds and health complaints.
   - <u>However, this study did find that sulfur emitted from the drywall could cause copper corrosion, resulting in potential electrical hazards.</u>

II. CURRENT LIABILITY LITIGATION: LOUISIANA MDL 2047: *IN RE CHINESE-MANUFACTURED DRY WALL PRODUCTS LIABILITY LITIGATION*

A. MDL Background

- As of May 2009, 107 civil suits had been filed across the country.
  - 83 in federal courts
  - 24 in state courts
  - EX: *Hinkley v. Taishan Gypsum*¸Case No. 2:09-cv-00025 (E.D. N.C)
    - Brought on behalf of all North Carolina residents whose homes contain defective drywall that was "designed, manufactured, exported, imported, distributed, delivered, supplied, inspected, marketed, sold and/or installed by:
      - Taishan Gypsum Co. Ltd. (Gov. controlled)
      - Tobin Trading Inc.
      - Venture Supply Inc.
      - Porter-Blaine Corp.

- EX: *Harrell v. South Kendall Construction at al.,* Case No. 09-8401CA40 (Cir. Ct. Miami-Dade County, Florida)
  - Class action filed against:
    - South Kendall Construction Corp.
    - Palm Isles Holdings LLC
    - Keys Gate Realty
    - Banner Supply Co.
    - Knauf Plasterboard Tianjin Co., Ltd.
    - Rothchilt Int'l.

- June 15, 2009, the Judicial Panel on Multidistrict Litigation entered an order combining pre-trial discovery for 10 pending federal drywall actions.

  - 8 actions from Florida
  - 1 from Ohio
  - 1 from Louisiana (Donaldson)
  - Assigned to Judge Eldon Fallon, who also presided over Vioxx litigation

- Lead case is *Donaldson et al. v. Knauf Gips KG et al.*, Case No. 2:09-md-02047

- On July 7, 2009, another 33 "tag along cases" were transferred to the MDL

B. TIP Testing

- Court and counsel have developed Threshold Inspection Protocol pursuant to Pretrial Order 13, entered August 27, 2009.

  - TIP is intended to determine whether a property at issue contains Chinese manufactured drywall, and who the manufacturer and distributor was, and the nature and extent of damages at a certain house

  - 30 cases identified as "Initial Cases" for TIP
    - 15 Florida, 8 from Louisiana, 7 other

  - Court appointed inspector is Crawford & Company

  - Idea is to examine the presence of drywall in each of the test homes, and alleged impact on wiring, HVAC and other aspects of the property

  - TIP is not intended to address health issues, preserve evidence or quantify property damage

- TIP will include:

  - Digital photos of each home
  - Observations regarding smell of sulfur or other strong odors that may be masking the sulfur
  - Visual inspection of heating coils in HVAC
  - Observations of electrical systems and circuit breakers
  - Observations of appliances and plumbing fixtures
  - Observations of bathroom fixtures
  - Visual inspection of light fixtures and electrical receptacles and switches around the home

  - Identification of drywall manufacturer using optical scope methodology
  - Testing and identification may also require more invasive cutting techniques
  - Specified numbering methodology will be used to determine which of approximately 30 sheets in each home will be tested.

C. MDL Trials

- "Bellwether trials"—representative trials

  - Scheduled to begin January 2010
  - Each side selects 10 cases to pursue in discovery
  - After discovery, each side selects 5 cases for trial
  - Each side then can vetoes 2 of its opponents cases, thereby bringing the total remaining cases for trial to 6
  - Of the 6 remaining cases, 5 will be tried, with 1 as the standby

D. Insurance Issues

- The parties have informed the court that "issues involving insurance matters will be addressed in this litigation. These include actions against insurers of manufacturers, exporters, importers, distributors, builders, drywall contractors/installers and homeowners."
- *Kessler v. GMI Construction…ASI Lloyds and HBW Insurance Services, LLC*, Case No. 09-cv-0672 (E.D. Louisiana), transferred to MDL September 24, 2009.
- *General Fidelity Ins. Co. v. Katherine L. Foster,* Case No. 09-08743 (S.D. Florida), transferred to MDL September 24, 2009.
- *Ronnie Van Winkle v. Knauf Gips…Nautilus Ins. Co.,* Case No. 09-4378 (E.D.

Louisiana), Nautilus to file Answer in MDL by October 14, 2009.

III. ANTICIPATED THIRD PARTY INSURANCE COVERAGE ISSUES

SEE APPENDICES FOR MULTI-STATE SURVEY OF EACH ISSUE WITH CASES ANALOGOUS TO DRYWALL.

A. Does faulty construction constitute an "occurrence"?

- Is the property damage unexpected and unintended?
- Does the property damage extend beyond the work of the insured?

- In some jurisdictions, a construction defect is never an occurrence.

- In other jurisdictions, the cost of the faulty work itself is not covered, but damages to other property is covered.

- **Adam's Rule of Thumb: The more removed the property damage is from the faulty workmanship that caused it, the more likely a court is to find an occurrence. THINK "MEET THE PARENTS"**

B. If so, when did occurrence take place? i.e., Trigger of coverage

- When drywall was installed?
- When homeowner noticed damage?
- All policies from installation to discovery?

- Trigger is probably less of an issue with drywall claims because we're only dealing with a few years. Also, the injury-in-fact, manifestation, and exposure will likely all be within the same policy period.

- Installation/ continuous or exposure trigger from asbestos probably not applicable because Chinese drywall seems to require some type of exposure to moisture to release gasses. Therefore, injury-in-fact or manifestation trigger seems attractive.

- **Adam's Rule of Thumb: When people are injured (as opposed to property), more policies are likely to be triggered.**

C. If so, how many occurrences took place? i.e., Number of Occurrences

- Courts focus on number of acts **causing** the damage
  - Is the builder's decision to using this drywall the act?

- Is using it at a particular complex the act?
- Is using it at each individual home the act?
- Maybe each person within each home is a separate occurrence?

- Direct Insurance Context:
  - Recall that, if the cedent's contract has "aggregation language," (usually facultative), then the reinsurer's fortunes may be tied to the cedent's interpretation and handling of that language. *North River Ins. Co. v. ACE American Reins. Co.*, 361 F.3d 134 (2d Cir. 2004).
  - Cedent is expected to cede claims in similar fashion as it treated the claims with its own insureds. *Allstate v. American Home.*

- Reinsurance Context
  - However, if the reinsurance contract has its own aggregation language that defines "each and every loss," then the reinsurer should be free to apply its own interpretation to the number of occurrences issue. *Travelers v. Certain Underwriters at Lloyd's London*, 760 N.E.2d 319 (N.Y. App. 2001).

- **Adam's Rule of Thumb: Injuries that occur around same time are more likely to be one occurrence. See the two cited Louisiana cases in the attached Number of Occurrences Appendix, p. 4-5.**

D. Absolute or Total Pollution Exclusion

- Absolute Pollution Exclusion
  - Absolute exclusion precludes coverage for any loss or expense arising out of a governmental clean up, and also for bodily injury or property damage arising out of the actual, alleged, or threatened discharge, dispersal, release or escape of pollutants:
  - At premises you own, rent or occupy
  - Site or location used for waste
  - Transportation, handling or storage of waste

  - **NOTE: 1998 ISO version specifies that fumes released from a faulty furnace are not excluded**

- Total Pollution Exclusion; ("The *Really* Absolute Exclusion")
  - Excludes coverage for "bodily injury" or "property damage" which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

- Is the gas from drywall a pollutant?

  - Manufacturer's 2006 study showed only "naturally occurring" gases were emitted.
  - However, Carbon disulfide and hydrogen sulfide were emitted from drywall, according to December 22, 2008 ENVIRON study.

  - Carbon disulfide and hydrogen sulfide are included in priority list of hazardous materials pursuant to Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

- Does the exclusion apply to "non-traditional" pollution? In other words, is a "release into the environment" required?

  - Exclusion has been applied to preclude coverage for welding rod fumes. *National Elec. Mfrs. Ass'n v. Gulf Underwriters Ins. Co.*, 162 F.3d 821 (4th Cir. 1998).

  - Exclusion has been applied to preclude coverage for damages caused by airborne particles from the manufacturer of grout that damaged roof tiles. *Dantzler Lumber & Export Co. v. Liberty Mut. Ins. Co.*, No. 99-7393 (S.D. Fla. Feb. 26, 2001).

  - Exclusion has <u>not</u> been applied to inhalation of hazardous fumes discharged by roofing products. *Nautilus Ins. Co. v. Jabar*, 188 F.3d 27 (1st Cir. 1999).

- **<u>Adam's Rule of Thumb: Focus on the science and the chemical nature of the contaminants rather than the "traditional or non-traditional" issue.</u>**

E. "Your Work" Exclusion

- Coverage is excluded for "property damage: to "your work" arising out of it or any part of it, and included in the "products completed operations hazard."

  - "Your work" is typically defined to include:
    - Work or operations performed by you or on your behalf
    - Materials, parts or equipment furnished in connection with such work or operations, including warranties, representations, and failure to warn and failure to provide specific instructions

- "Products completed operations hazard" refers to property damage or bodily injury that "occurs away from premises you own or rent and arising out of your product or your work except work that has not yet been completed or abandoned."
- **Adam's Rule of Thumb: Think about the defendant's scope of work, and this may define "your product." i.e. for the general contractor or company that sold the house, the whole home may be "your product."**

F. Impaired Property Exclusion

- Excludes coverage for "property damage: to "impaired property" or property that has not been physically injured, arising out of 1) a defect, deficiency, inadequacy or dangerous condition in your product or your work, or; 2) a delay or failure by you or anyone on your behalf to perform a contract or agreement in accordance with its terms

IV. HOW DOES IT ALL COME TOGETHER?

A. *Lennar Corp. v. Auto-Owners Ins. Co.*, 151 P.3d 538 (Ariz. App. 2007)

1. The Drywall Damage

- Lennar oversees building of 105 homes in an Arizona development
- Construction of homes from December 1993 to September 1995
- Lennar did not perform any construction itself. All subcontractors.
- In 1993, homeowners complained of drywall cracking, grout cracking, baseboards separating , sticking doors
- September 1998, homeowners began to sue Lennar for negligent construction, generally related to building on expansive soil
- Lennar tenders defense to its insurers, and well as the insurers of its subcontractors

2. The Insurance Coverage Issues

a) Does faulty construction constitute an occurrence?

- In cases where the only alleged damage is the faulty construction alone, then is no occurrence.
- In this case, there was other property damage alleged to be the result of the faulty construction, therefore there was an "occurrence."

- A minority of states hold that negligent construction is not an occurrence, therefore the damages caused by negligent construction do not constitute an occurrence.
- Court rejected that minority view. Court found that property damage caused by faulty construction does constitute an occurrence.
  - **The "Your Work" exclusion** does not preclude coverage because the exclusion specifically does not apply to liability arising from the work of subcontractors.

- Insurers also argued, no occurrence because there was no "accident." The workers performed their jobs exactly as they had planned.
- Court rejected the argument because workers did not intend the damages.

b) Is Lennar an Additional Insured Under Subcontractors' Policies?

- Complaint alleges nothing against a specific subcontractor
- Lennar's investigation did point to the alleged negligence of two specific subcontractors.
- This is enough to establish that Lennar faced liability arising out of the work of those subcontractors.
  - This ruling does not apply to one particular subcontractor who agreed only to indemnify Lennar, not to obtain insurance on behalf of Lennar.

c) Which policy periods 1993 to 1995 are triggered?

- Insurers in later years argue all damage relates back to 1993 when the defects began to appear or **manifest**.
- Court found that policies are triggered by "property damage."
- Therefore, as long as some property damage took place during a period, that period is triggered, regardless of earlier property damage.
- The result is that each policy period when damage took place is triggered. THIS IS **NOT** AN ALLOCATION RULING.

B. ***Auto-Owners v. Pozzi Window Company*, 984 So.2d 1241 (Fla. 2008)**

- Facts:
  - General Contractor built a house

- Subcontractor installed the windows
- Retailer sold the windows
- Manufacturer made the windows

- Windows leaked and damaged homeowners' personal property
- Homeowner sued everyone:
  - Alleged negligent design, manufacture, installation
- Manufacturer settled with homeowner, but still claimed that damages were caused by negligent installation, not manufacture.
- Manufacture then settled with General Contractor.

- Insurance claim is then made against General Contractor's insurance- based on liability the General Contractor face arising from its subcontractor's negligence.
- Insurer pays for the cost of the homeowner's personal property, but **refuses to pay for the cost of repair and replacing the windows, as this is simply damage to "your work" and not third party property damage.**

  - There was the typical exclusion for damage caused by "your work," but of course this exclusion doesn't apply where the Insurer is providing completed operations coverage.

- U.S. Court of Appeals for Eleventh Circuit asked Florida Supreme Court to decide, under Florida law:

  - Does a CGL policy with products completed coverage (house completed)
  - When issued to a general contractor,
  - Cover the general contractor's liability to a third party,
  - For the **costs of repair or replacement**,
  - Of defective work performed by the subcontractor?

- IF THE DAMAGES RESULTED FROM DEFECTIVE INSTALLATION:

  - Then, the policy covers the cost of repair and replacement because the damage to the windows was "physical damage to tangible property" cause by faulty installation. Damage to windows same as damage to carpet or wallpaper.

- IF THE DAMAGES RESULTED FROM DEFECTIVE WINDOWS:

  - **Then replacing a previously defective window is simply the**

replacement of a "defective component." It is not property damage. No coverage for costs of repair or replacement.

- SIGNIFICANCE TO DRYWALL CLAIMS AGAINST BUILDERS?

  - Even if a policy provides coverage for products completed operations hazards, the repair and replacement costs are likely **not** to be third party property damage in Florida because the drywall was defective prior to installation.

V. PENDING DRYWALL INSURANCE COVERAGE LITIGATION

A. FIRST PARTY: *Baker v. American Home Assurance Company, Inc.*, U.S. Dist. Court, Middle District of Florida, Case No. 2:09-cv-00188-UA-DNF

- Complaint filed March 30, 2009
- Plaintiffs are owners of a home in Fort Myers, Florida
- Insured by AIG under a standard homeowners policy
- December 17, 2008, plaintiffs informed AIG of defective drywall in their home emitting odor and gases.
- The next day, AIG inspected the property, then hired Rimkus Consulting Group to conduct an inspection.
- AIG is alleged to have verbally denied the claim, but refused to produce its testing results.

- Plaintiff alleges Pollution Exclusion does not apply. Specifically, plaintiff claims that the gasses emitted from the drywall in the Subject Property are not 'contaminants' as defined in the Policy because they are not an "impurity resulting from the mixture of or contact with a foreign substance."

- AIG's Answer and Affirmative Defenses:

  - No occurrence during policy period.
  - Excluded by pollution exclusion.

  - Exclusion for "loss caused by gradual deterioration, wet or dry rot, warping, smog, rust, or other corrosion."

  - Exclusion for "faulty, defective or inadequate a) planning, zoning, developing; b) design, specifications, workmanship, repair, construction; c) materials used in repair, construction, renovation or remodeling; d) maintenance

- Exclusion for loss caused by the presence, growth, proliferation, spread or any activity of **fungi or bacteria including the cost to test for, monitor, clean up, move remediate, contract, treat, detoxify, neutralize or in any way respond to, or assess the effects of fungi or bacteria.**

- NOTE: Good case to test to see extent to which courts determined to protect individual policy holders.

B. THIRD PARTY: *Builders Mutual Ins. Co. v. Dragas Management Corp. et al.*, U.S. Dist. Court, Eastern District of Virginia, Case. No. 2:09-cv-00185-RBS-TEM

1. The Parties in Dragas Management

- Plaintiff, Dragas Management Corporation is a housing developer in Virginia Beach, Virginia.

- Dragas subcontracted with Porter-Blaine Corporation to install the Chinese Drywall

- Insurance companies at issue are:

  - Builders Mutual: **March 1, 2008 to March 1, 2009**
    Feb. 2006 to Feb. 2007
  - Firemen's Ins. Co.: **Feb. 2007 to Feb. 2008**

  - Hanover Ins. Co.: ***Insured the subcontractor***
  - Citizens Ins. Co.: ***Insured the subcontractor***

    - Dragas alleges that it is an additional insured under the CGL and Umbrella coverage provided to the subcontractor, and demands coverage under same.

2. Coverage Issues in Dragas Management

a) Total Pollution Exclusion: basis for denial by Builders Mutual

b) Number of Occurrences

- Builders Mutual claims each installation of Chinese Drywall constitutes a separate occurrence to which the $100,000 per occurrence deductible applies

c) Trigger Issues and Dates

- February 2009, Dragas made a claim for coverage to Builders Mutual
- Subcontractor used Chinese drywall between February 14, 2006 and November 2006

d) Builders Mutual also cites "Your Work" Exclusion

VI. CONCLUSION: QUESTIONS AND MAJOR ISSUES

A. Summary on Property Damage Claims?

- These are likely seen as either pollution claims or contract claims.
- Either way, both types of claims have multiple exclusions indicating no intent for coverage.
- Even when there is coverage, it's more likely for the personal property, and not necessarily for the repair and replacement itself.
- This all presumes that your cedent promptly analyzes claims, reserves rights, applies correct and updated state law. Remember: *Sutter v. General Accident* indicates that a cedent must make reasonable investigation and analysis.

B. Watch the Impact of Legislation

- **September 23, 2009 Secret Inter-agency Meeting**
  - Congressional delegation met behind closed doors with representatives from 4 federal agencies
  - CPSC test results pushed back to October
  - Congress is now considering standards for repair, perhaps federal funding of repairs
  - "Legislative action may be required"

- PRO: May help with pollution exclusion
  - What is a pollutant? Chances increase that "off-gassing" is pollution.
  - Most policies contain explicit pollution exclusions for government mandated clean up.

- CON: Would likely lend tremendous legitimacy to BI claims
  - Ex: PCBs. Once Congress acted, claims activity went through the roof.
  - Only takes one *Elam.* This was a $1 million welding rod verdict that gave rise to an industry of such claims.
  - Inhaling putrid sulfur gas doesn't seem healthy. Congressional actions lends credence to seriousness of the problem.

C. So Where's the Magic in These Claims?

- **Defense costs:**
  - The outrageous cost of establishing which drywall is Chinese drywall?
  - Cost of proving what damage was caused by the drywall versus other sources?
  - The impact of a few large companies on the litigation (welding rods). Who may or may not refuse to settle.
- How are insurers sharing defense costs on a given claim? Especially an issue when one insurer on the risk has claims made policy and others may have occurrence.
- What investigation/testing costs are defense versus indemnity?
- What costs are business expenses and not defense? i.e. public relations firms, seminars?
- Are insurers being given access to the bills and auditing?
- Fact intensive nature of these claims demands reinsurers actively gather info while the common interest is still common.

VII. WILL THIS TOPIC COST YOU A FORTUNE?

A. What is a cedent's favorite snack?

- *Follow the Fortunes Cookies*

B. Why don't reinsurers eat melon?

- *Too many cedes*

C. What is bad faith?

- *Believing the Cubs will win it all next year.*

D. What is a reinsurer's least favorite snack?

- *Follow the Settle Mints*

Drywall Analogies:
Is faulty construction an occurrence?

State	Citation	Facts	Finding	Comments
Alabama	United States Fid & Guar. Co. v. Bonitz Insulation of Ala., 424 So. 2d 569 (Ala. 1982)	Insured installed roof on school gymnasium. Within a year after completion, the roof began to leak, and water entry from the roof continued over the next several years until the roof was completely replaced. Thereafter, the city sued the insured alleging breach of contract by failing to perform a good and workmanlike manner and by failing to follow specifications in the installation of the roof.	Occurrence and no occurrence	The term accident does not necessarily exclude human faults caused by negligence. When the property damage began vis-à-vis the roof leaks, there was an occurrence under the policy then in effect. Since the insured was merely charged with negligence in installing the roof, there is no evidence that the insured either expected or intended the roof to start leaking. However, there is no accident or occurrence under a subsequent policy that incepted nearly 4 1/2 years after the roof had started leaking because, at that time, the damage that resulted when the possibility of leaks became a reality was not unusual, unexpected, or unforeseen and, therefore, not an accident.
Alaska	Fejes v. Alaska Ins. Co., 984 P.2d 519 (Alaska 1999)	Homeowner sued contractor after curtain drain improperly constructed by subcontractor failed, causing septic system to stop functioning.	Occurrence	The term "accident" is defined as "anything that begins to be, that happens, or that is a result which is not anticipated and is unforeseen and unexpected," and from the insured's standpoint, the failure of the curtain drain was neither expected nor intended.
Arizona	**Lennar Corp. v. Auto-Owners Ins. Co., 151 P.3d 538 (Ariz. Ct. App. 2007)**	**Homeowners sued developer alleging breach of implied warranty, breach of contract, negligent misrepresentation, consumer fraud, and negligence after experiencing drywall cracks, grout cracks and baseboard separation, and sticking doors.**	**Occurrence**	**Allegations that property damage resulted from faulty work sufficient to allege occurrence. Faulty construction may constitute a "general harmful condition," so that when "accidental" property damage results from continued exposure to faulty construction, that property damage is an occurrence as defined by the plain language of the policies.**
Arizona	United States Fid. & Guar. Corp. v. Advance Roofing & Supply Co., 788 P.2d 1227 (Ariz. 1990)	Insured contracted to replace the roofs of 250 units in a housing complex. Insured only replaced the roofs of 40 units and did faulty work on those units. The homeowners' association sued the insured for breach of contract alleging that the work it performed was not in accordance with the contract requirements and was not performed a good and workmanlike manner.	No occurrence	Faulty workmanship, standing alone, cannot constitute an occurrence.

Drywall Analogies:
Is faulty construction an occurrence?

Arkansas	Nabholz Constr. Corp. v. St. Paul Fire & Marine Ins. Co., 354 F. Supp. 2d 917 (E.D. Ark. 2005)	Roof on building constructed by insured's subcontractor leaked, and building owner demanded replacement of the roof. Subsequent engineering inspection revealed that the roof leaked because it was not installed in accordance with manufacturer recommendations. The engineer found no damage to other parts of the building other than some stained ceiling tiles, and possible damage from water leaking into the perimeter wall cavities and/or behind the exterior insulation finishing system.	No occurrence	The insured may not recover the economic damages incurred in connection with its subcontractor's construction of a faulty roof, which resulted in the foreseeable breach of contract. This is not a qualifying event which triggered coverage for the resulting property damage. However, the insured may recover for any property damage which resulted because the roof leaked, such as water stained ceiling tiles.
Arkansas	Geurin Contractors, Inc. v. Bituminous Cas. Corp., 636 S.W.2d 638 (Ark. Ct. App. 1982)	Business owner sued highway contractor for lost profits alleging negligent performance of highway contract caused road closure at front of store.	Occurrence	Repeated delays to highway construction project caused by unforseen and unexpected soil conditions was not expected nor intended by the insured and thus constitutes an occurrence.
California	Maryland Cas. Co. v. Reeder, 270 Cal. Rptr. 719 (Cal. Ct. App. 1990)	Condominium owners sued developer and builder alleging that their units had been damaged by soil subsidence. They alleged that their condominiums experienced severe cracks in the walls and settling of the slab, that their units and been damaged to the extent that they were rendered valueless, and that the soil subsidence had caused cracking and separation in concrete floor slabs, foundations, retaining walls, interior and exterior walls and ceilings, and exterior concrete patio areas and walkways. The condo association also alleged that the roofing system had failed, permitting rainwater and moisture to penetrate the roofs and causing damage to the building structures and to the contents of the affected units.	Property damage	Although inferior materials or workmanship standing alone does not constitute property damage, there is property damage where the defect in fact has caused either physical injury to or loss of use of tangible property. Here, there are allegations of physical harm to tangible property. The homeowners and the condo association have alleged soil subsidence that has cracked concrete floor slabs, foundations, retaining walls, interior and exterior walls and ceilings and exterior concrete patio areas. Moreover, failure of the roofing system has allegedly allowed rainwater to damage building structures on the contents of living areas. These allegations go beyond allegations that defects in material and workmanship exist in the project and allege property damage within the meaning of the policy.
Colorado	Adair Group, Inc. v. St. Paul Fire & Marine Ins. Co. 477 F.3d 1186 (10th Cir. 2007)	Insured general contractor brought suit against CGL insurer seeking coverage for arbitration award against it for construction deficiencies in work of its subcontractors.	No occurrence	Faulty workmanship in and of itself is not treated as an event triggering application of an insurance policy. Rather, coverage requires additional damage resulting from faulty workmanship. In this case, the insured sought indemnity for the construction deficiencies alone, not for any consequent or resultant damages flowing from the poor workmanship.

Drywall Analogies:
Is faulty construction an occurrence?

Colorado	Union Ins. Co. v. Hottenstein, 83 P.3d 1196 (Colo. Ct. App. 2003)	Homeowner sued construction company alleging breach of contract to remodel home and negligence. The dispute was arbitrated, and the arbitrator awarded damages to the homeowner consisting of the cost to complete the contract, to remedy defects (including damages to repair inadequate work and to replace or repair personal property), and damages for lost business income, lost rental income, and for negligent performance (i.e., damage to existing roof), and for loss of enjoyment. The insurance company conceded that it had liability for the negligence award, but argued that it had no duty to indemnify the construction company for the balance of the arbitration award.	No occurrence	A breach of contract is not generally an accident that constitutes a covered occurrence. Poor workmanship constituting a breach of contract is not a covered occurrence.
Colorado	American Employer's Ins. Co. v. Pinkard Constr. Co., 806 P.2d 954 (Colo. App. 1990)	The insured installed a roof that failed due to corrosion. The corrosion was a continuous, progressive condition which begin immediately following the construction of the roof and was caused by the use of certain fill material. By the time a portion of the roof collapsed and the corrosion was discovered, the damage was widespread.	Occurrence	There was an occurrence triggering coverage under each policy in effect between the installation of the roof and its collapse.
Colorado	Colard v. American Fam. Mut. Ins. Co., 709 P.2d 11 (Colo. Ct. App. 1985)	Insured entered into a contract with homeowners to build a home. The homeowners terminated the contract because of negligent and unsatisfactory construction and hired other contractors to correct and complete the construction.	Occurrence	The results of the insured's actions were neither expected nor intended, and the unintended poor workmanship of the insured created an exposure to a continuous condition that resulted in property damage. Hence, the damage here at issue was the result of an occurrence.
Florida	**Auto-Owners Ins. Co. v. Pozzi Window Co. 984 So. 2d 1241 (Fla. 2008)**	**Homeowner sought the cost of replacing windows after experiencing water leakage around windows purchased by homeowner and installed by subcontractor in new home.**	**Occurrence**	**Defective installation of windows constitutes an occurrence.**
Florida	**United States. Fire Ins. Co. v. J.S.U.B., Inc., 979 So. 2d 871 (Fla. 2007)**	**Damage to the foundations, drywall, and other interior portions of homes appeared due to subcontractors use of poor soil and improper soil compaction and testing.**	**Occurrence**	**Faulty workmanship that is neither intended nor expected from the standpoint of the contractor constitutes an accident and thus an occurrence.**
Florida	J.S.U.B., Inc. v. United States Fire Ins. Co., 906 So. 2d 303 (Fla. Dist. Ct. App. 2005)	After completion of construction of a series of homes, some homes suffered damage when the exterior walls moved or sank as a result of improper compaction of the soil, improper testing of the soil compaction, poor soil or fill material, or a combination thereof. The damages included structural damage as well as damage to items placed in or affixed to the homes, such as wallpaper.	Occurrence	Faulty workmanship that is neither expected nor intended from the standpoint of the contractor can constitute an accident and thus occurrence.

Georgia	Custom Planning & Dev., Inc. v. American Nat'l Fire Ins. Co., 606 S.E.2d 39 (Ga. Ct. App. 2004)	Purchaser of property contended that crosstie retaining wall built on site was defective because of poor soil compaction and the presence of trash and debris in the fill soil.	No occurrence	There is no occurrence where faulty workmanship causes damage only to the work itself, i.e., the crosstie retaining wall.
Georgia	Hardaway Co. v. United States Fire Ins. Co., 724 So. 2d 588 (Fla. Dist. Ct. App. 1998)	Contractor who constructed pipeline in 1975 sued insurers to recover cost of settlement entered into following pipeline explosion in 1987.	No occurrence	Explosion of the pipe in 1987 was the occurrence that would trigger coverage, but only if the pipe exploded during the policy period. Because the pipeline failed after the policy period, there was no occurrence under the policies at issue.
Hawaii	Burlington Ins. Co. v. Oceanic Design & Constr., Inc., 383 F.3d 940 (9th Cir. 2004)	Insured completed construction of a single-family residence, but not to the satisfaction of the homeowners who refused to pay. The insured then filed an action against the homeowners seeking payment. The homeowners counterclaimed asserting breach of contract, breach of express and implied warranties, deceptive trade practices, and negligence and/or intentional infliction of emotional distress. The homeowners complained that the insured improperly designed and/or constructed the foundation of the residence causing earth movements and resulting in physical and structural damage to both the residence and the retaining walls on the property.	No occurrence	Although allegations in the homeowners' counterclaim are couched in terms of negligence, it is undisputed that the insured entered into a contract to construct a home for the homeowners. The counterclaim then alleges that the insured breached its contractual duty by constructing a residence substantially inferior to the standard of care and quality which had been agreed. Other than a breach of that contractual duty, the facts do not reflect a breach of an independent duty that would otherwise support a negligence claim. If the insured breached its contractual duty by constructing a substandard home, then facing a lawsuit for that breach is a reasonably foreseeable result, and not an occurrence.
Illinois	Stoneridge Dev. Co. v. Essex Ins. Co., 888 N.E.2d 633 (Ill. App. Ct. 2008)	Townhouse owner sued builder alleging that townhouse had structural problems because the land underneath it and in portions of the common area consisted of unsuitable structural bearing soils and that soil movement had caused the load bearing elements of the townhouse to move, crack and fail.	No occurrence	The cracks that developed in the townhouse were not an unforeseen occurrence that would qualify as an "accident" because they were the natural and ordinary consequences of defective workmanship, namely, faulty soil compaction. While defective workmanship could be covered if it damaged something other than the project itself, in this case the homeowner alleged damage only to the home. Thus, there was no occurrence.

Illinois	Viking Constr. Mgmt., Inc. v. Liberty Mut. Ins. Co., 831 N.E.2d 1 (Ill. App. Ct. 2005)	Following the collapse of a masonry wall at a construction site that injured a worker, insured construction manager was sued for allegedly failing to properly supervise and for allowing faulty bracing.	No occurrence	Here, the collapse of the wall and section of the building was the ordinary and natural consequence of improper bracing, i.e., faulty construction work, which resulted from, at least in part, the insured's breach of its contractual duties to ensure proper construction methods were employed. These damages claimed were the natural and ordinary consequences of defective workmanship and, accordingly, did not constitute an occurrence.
Illinois	State Farm Fire & Cas. Co. v. Tillerson, 777 N.E.2d 986 (Ill. App.Ct. 2002)	After insured constructed a new room addition and converted existing carport into a garage, homeowners sued the insured alleging breach of express warranty of workmanship, breach of implied warranty of habitability, and breach of implied warranty of fitness for ordinary or particular purpose by building over a cistern and failing to take necessary precautions to prevent uneven settling of the soil beneath the room addition.	No occurrence	The alleged damages were not the result of an accident. The complaint alleged that the insured's work was defective in design, material, and workmanship, and that the room addition and carport conversion were not fit for their intended purpose. These allegations to not fall within the meaning of an accident or an occurrence. Where the defect is no more than the natural and ordinary consequences of faulty workmanship, it is not caused by an accident. The complaint does not allege an event that was unforeseen or sudden or unexpected. The alleged construction defects are the natural and ordinary consequences of the insured's alleged improper construction techniques.
Illinois	Pekin Ins. Co. v. Richard Marker Assocs., Inc., 682 N.E.2d 362 (Ill. App. Ct. 1997)	Insured hired to construct a new building to contain a residence, dental offices, and laboratory. Building owner filed suit, alleging that insured failed to locate and install plumbing pipes properly and failed to insulate exterior facing areas which caused water pipes to burst, resulting in significant property damage to carpeting, drywall, antique furniture, clothing, personal mementos and pictures. The building owner also alleged that the HVAC system did not operate properly, such that condensation in the atrium caused extensive water damage to window trim, furniture, carpet, flooring, and walls.	Occurrence	The complaint alleged that faulty workmanship caused an accident in the form of continuous or repeated condensation which dripped and damaged furniture. This is more than an allegation that the building itself was defective. The complaint also alleged damage to furniture, clothing, and antiques when an insulated pipe froze and burst. This allegation also falls within the meaning of an accident and occurrence.

Illinois	Monticello Ins. Co. v. Wil-Freds Constr., Inc., 661 N.E.2d 451 (Ill. App. Ct. 1996)	Municipal building and garage built by insured alleged to contain construction defects, including abnormal voids and cracks in the concrete walls and columns in the parking garage, honeycombed concrete, abnormal cracking in the stairwell, exposure of rebar in a column, insufficient support for anchor bolts at a column, leaking in the parking garage, water damage to the lobby of the office building and basement under the lobby, interior water damage caused by water penetration from the roof, and unbalanced, defective HVAC system cracked floors and stairwells, and defective doors.	No occurrence	The alleged construction defects are the natural and ordinary consequences of the improper construction techniques of the insured and its subcontractors and, thus, do not constitute an occurrence with an the meaning of the policy.
Illinois	Indiana Ins. Co. v. Hydra Corp. 615 N.E.2d 70 (Ill. App. Ct. 1993)	Building owner sued contractor alleging that numerous cracks had appeared in concrete flooring and that the building's exterior paint had become loose and unsightly.	No occurrence	Cracks on the surface of concrete flooring and the loose paint on the exterior of the building were not accidental but instead were the natural and ordinary consequences of installing defective concrete flooring and applying the wrong type of paint.
Indiana	Amerisure, Inc. v. Wurster Constr. Co., 818 N.E.2d 998 (Ind. Ct. App. 2004)	General contractor entered into contracts for two construction projects, including installation of exterior sheathing and exterior finish systems for the projects. Following the completion of the work by subcontractors, the general contractor received notice to commence and/or continue corrective work to repair and replace the exterior sheathing and exterior insulation finish systems.	No occurrence	Here, the exterior sheathing and exterior finish systems failed due to defective workmanship. The failure of these interconnected systems is the natural and ordinary consequence of the defective work, and is not an accident. Defective workmanship that results in damages only to the work product itself is not an occurrence under a CGL policy.
Indiana	R.N. Thompson & Assocs., Inc. v. Monroe Guar. Ins. Co., 686 N.E.2d 160 (Ind. Ct. App. 1997)	Homeowners association sued developer for breach of implied warranty of habitability, alleging that the roof decking on some of the buildings was damaged due to degradation of the plywood used for a portion of the roof, that attics were improperly vented, that closed dryers were improperly vented directly into the attics, that the roof system was built in the substandard manner, and that failure to inspect and reject substandard work allowed excessive heat and moisture to build up in the attic areas. The homeowners association sought damages consisting of the expense it would incur to repair or replace the defectively designed, constructed, inspected, or maintained units.	No occurrence	The degradation of the fire resistant plywood used as roof decking in the buildings constructed by the insured was the natural and ordinary consequences of the work done by the insured or under its supervision. The process of "acid hydrolysis" which degraded the plywood was the result of increased temperature, inadequate ventilation, and moisture accumulation in the attic area because the roof systems were installed without proper ventilation. The homeowner's action is one for breach of contract arising from faulty workmanship and design, and from use of defective materials. The economic losses suffered by the association were the natural and ordinary consequences of the insured's breach. Because a typical CGL policy does not cover an accident of faulty workmanship, but rather faulty workmanship which causes an accident, the association's losses do not arise from an occurrence.

Iowa	Norwalk Ready Mixed Concrete v. Travelers Ins. Co., 246 F.3d 1132 (8th Cir. 2001)	Insured supplied concrete for the construction of a trucking terminal parking lot. Three years after the construction of the parking lot, the concrete begin to crack and deteriorate abnormally, then the property owner filed suit seeking damages for the costs expended to repair and replace the concrete.	No occurrence	Defective workmanship, regardless of who is responsible for the defect, cannot be characterized as an accident. There are no facts presented from which a reasonable trier of fact could conclude that the concrete damage was caused by an occurrence within the meaning of the policy.
Iowa	Yegge v. Integrity Mut. Ins. Co., 534 N.W.2d 100 (Iowa 1995)	Homeowners sued contractor who built their home asserting breach of contract, breach of express warranty of fitness for a particular purpose, breach of implied warranties; negligence, and fraud. They sought damages for the cost of labor, material, and supplies necessary to complete the residence to their satisfaction, disruption of their lives, impairment of their business, increased expenses, diminished investment audience, and emotional distress.	No occurrence	The alleged conduct at issue did not constitute an occurrence under the policy. The alleged failures giving rise to the homeowner's claim included breach of contract, breach of express warranty, breach of implied warranty and fraud, none of which involve accidental conduct.
Kansas	Lee Builders, Inc. v. Farm Bureau Mut. Ins. Co., 137 P.3d 486 (Kan. 2006)	Homeowners complained that windows installed in new home were leaking and the stucco exterior was cracking and leaking.	Occurrence	Faulty materials and workmanship provided by subcontractors caused continuous exposure of home to moistures and the moisture, in turn, caused damage that was both unforeseen and unintended.
Kansas	Fidelity & Deposit Co. of Md. v. Hartford Cas. Ins. Co., 189 F. Supp. 2d 1212 (D. Kan. 2002)	Much of work performed on school and performing arts center project determined defective, including many masonry walls with significant deterioration with crushed, cracked, and broken blocks within the walls, cracked control joints, cracked mortar joints, hacked-in mechanical openings, wet insulation, cracked concrete floor slabs, cracked lintels, a cut and defective roof deck, bent and burnt flashing, incorrectly located lintels and control joints, and improperly backfilled storm drain lines.	Occurrence	Damage that occurs as a result of faulty or negligent workmanship constitutes an occurrence as long as the insured did not intend for the damage to occur. Structural defects and other damages to the project caused by negligent workmanship constitutes an occurrence.
Kansas	Green Constr. Co. v. National Union Fire Ins. Co. of Pittsburgh, Pa., 771 F. Supp. 1000 (W.D. Mo. 1991), vacated, 975 F. Supp. 1365 (W.D. Mo. 1996)	Insured contracted with a public utility to build a dam. After construction was completed, the dam settled and cracks were discovered in it. Eventually, the public utility had to demolish the dam and rebuild it. The cause of the settling was the inadequacy of soil incorporated into the dam. Tests performed during construction by third-party concluded that the soil met the contract specifications. It was later discovered, however, that the soil did not in fact meet the contract specifications.	Occurrence	Improper settling of dam caused by the insured's negligence constituted an occurrence because the damage was not caused by the reckless or intentional conduct of the insured.

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Kentucky	Standard Fire Ins. Co. v. Chester-O'Donley & Assocs., Inc., 972 S.W.2d 1 (Tenn. Ct. App. 1998)	Architect and general contractor sued subcontractor who installed the ductwork for an HVAC system in a school building for failure of the HVAC system. Shortly after the building was occupied, serious problems with the HVAC system began to manifest themselves which could not be remedied by fine-tuning the system. It was later determined that the HVAC system failed to meet the project's specifications.	No occurrence	In circumstances that do not involve personal injuries, CGL policies do not cover economic loss without some sort of physical injury to tangible personal property that is not owned by the insured or that is not part of the insured's work. Additional construction expenses, lost profits, or diminution in value of the project caused by the insured's defective work are the sort of economic losses that do not fit within the definition of property damage.
Louisiana	Joe Banks Drywall & Acoustics, Inc., v. Transcontinental Ins. Co., 753 So.2d 980 (La. Ct. App. 2000)	Sheet vinyl flooring installed by contractor became stained. The origin of the staining was never determined, but it apparently seeped up from beneath the vinyl.	Occurrence	Since there was no allegation that the damage was intentional, the court found that the damage constituted an occurrence.
Louisiana	Iberia Parish School Bd. v. Sandifer & Son Constr. Co., 721 So. 2d 1021 (La. Ct. App. 1998)	Following the completion of the construction of a roof on a new middle school, school board discovered leaks in the roof and filed suit, alleging that the roof exhibited numerous leaks caused by defective materials and poor workmanship, resulting in unspecified damages to the school.	Occurrence	Under the policy, an occurrence is an accident including continuous or repeated exposure to substantially the same general harmful conditions. The roof leaked. That was an accident or occurrence. The roof leaked allegedly because improper construction caused damage to it and made it leak. As a result, the roof had to be replaced. There are allegations that defective workmanship and defective materials caused continuous exposure to rain, which caused the roof to leak. This allegedly resulted in property damage because the roof had to be replaced. This allegedly improper construction causing damage to the roof triggered an occurrence under the terms of the policy.
Maryland	French v. Assurance Co. of Am., 448 F.3d 693 (4th Cir. 2006)	Subcontractor hired by insured applied synthetic stucco to exterior of home. Five years later, the homeowners discovered extensive moisture and water damage to the otherwise nondefective structure and walls of their home resulting from the defective cladding of the exterior of their home with synthetic stucco.	Occurrence and not an occurrence	With respect to damage to the synthetic stucco itself, the defective application of the synthetic stucco to the exterior of the home does not constitute an accident and therefore not an occurrence under the policy. The obligation to repair the façade itself is not unexpected or unforeseen under the terms of the contract. However, with respect to damage to the otherwise nondefective structure and walls of the home, the moisture intrusion was unexpected and unintended, and therefore an accident and an occurrence.

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Maryland	Reliance Ins. Co. v. Mogavero, 640 F. Supp. 84 (D. Md. 1986)	Owner of fire-damaged apartment building sued insured for performing renovation work improperly, asserting theories of negligence, breach of contract, breach of express warranty and fraudulent concealment. The alleged defects to the building included openings in the drywall exterior, omitted insulation, wrong glass type, air leaks, lack of heat, missing fireplace dampers, defective flues, inadequate electric water heater capacity, uninsulated hot water pipes, lack of firewalls, dampers, charred and rotted wood concealed, inadequate flooring supports, nonfunctional heaters, lack of fire stops, inadequate water pressure, improper drains and vents, unsealed pipes, inadequate and defective air-conditioning system and cracking and settling, inadequate slab thickness, and other structural defects in the parking garage.	No occurrence	Occurrence does not include the normal, expected consequences of poor workmanship.
Massachusetts	Davenport v. United States Fid. & Guar. Co., 778 N.E.2d 1038, 2002 WL 31549391 (Mass. App. Ct. 2002) (unpublished)	Painting subcontractor engaged to paint a residential home failed to apply a primer coat before putting on a final coat of exterior paint. As a result, the paint peeled and flaked, causing the general contractor to redo the work. The general contractor then sought to recover against the subcontractor's insurance policy.	No occurrence	Faulty workmanship alone is not an occurrence.
Michigan	Hawkeye-Sec. Ins. Co. v. Vector Constr. Co., 460 N.W.2d 329 (Mich. Ct. App. 1990)	After concrete obtained from concrete supplier had been poured by subcontractor, testing revealed that concrete did not meet the project's plans and specifications. Subcontractor then removed and repoured 13,000 yards of concrete and submitted claim to insurer.	No occurrence	Defective workmanship, standing alone, is not the result of an occurrence within the meaning of the policy. The use of inferior cement does not constitute an occurrence.
Minnesota	Aten v. Scottsdale Ins. Co., 511 F.3d 818 (8th Cir. 2008)	Homeowners sued builder for damages for defective home construction, including missing trim, exposed sheetrock screws, damaged pieces of sheetrock installed, interior walls not plumb, uneven floors, gaps between floors and walls, trim and doors off center, door jambs improperly installed, uneven and cracked floors in the garage and basement, and basement floor not graded properly toward the drain causing water damage.	Occurrence	Water damage to other property resulting from an improperly poured and graded basement floor which caused water to flow away from the drain is an occurrence.

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Minnesota	Corner Constr., Inc. v. United States Fid. & Guar. Ins. Co., 638 N.W.2d 887 (S.D. 2002)	Insured entered into a contract to construct a school administration building. Insured hired subcontractors to to install insulation, the building's external thermal envelope, the heating and cooling system, and to construct an outside fountain. Almost immediately after occupancy, the school began to experience problems with the building's heating and ventilation system, the concrete floor, and the outdoor fountain.	Occurrence	There was an accident or unintended event, resulting in property damage that was neither expected nor intended by the insured, at least with respect to the installation work. The subcontractor left avoids in the insulation between the studs and failed to securely attach the vapor barrier. The vapor barrier fell, causing temperature fluctuations and other ventilation problems. As a result, the insured's own work was damaged by the faulty work of its subcontractor. The insured was forced to remove the drywall, fix the vapor barrier, replace the drywall, and then re-tape, retexture and repaint portions of the building that had been damaged.
Minnesota	Bor-Son Bldg. Corp. v. Employers Commercial Union Ins. Co. of Am., 323 N.W.2d 58 (Minn. 1982)	General contractor who constructed turnkey buildings pursuant to federal contract sued by building owner for damages caused by faulty workmanship and materials after the buildings developed significant leaks.	No occurrence	The allegations in the complaints concern faulty workmanship and materials resulting in damage to the buildings themselves. These allegations, if proved, were damages arising from a breach of contract, whether the acts or omissions giving rise to the claims were negligent or intentional.
Missouri	St. Paul Fire & Marine Ins. Co. v. Building Constr. Enters. Inc., 484 F. Supp. 2d 1004 (W.D. Mo. 2007)	Subcontractors constructed underground duct banks to house electrical, data, and communications cables that did not meet design requirements, and general contractor sought costs of correcting those deficiencies and for reseeding grass torn up during the required re-excavation of the duct banks.	No occurrence	Substandard work performed by subcontractors does not constitute an occurrence, and the costs associated with additional grass re-seeding an excavation "cannot be considered an accident or occurrence anymore than the negligent work which necessitated them."
Missouri	American States Ins. Co. v. Mathias, 974 S.W.2d 647 (Mo. Ct. App. 1998)	Insurer sought declaration that it had no duty to defend and indemnify sub-contractor in a negligence, negligent misrepresentation, and breach of contract action brought by subcontractor to recover damages incurred when it had to remove and replace sub-subcontractor's improperly trenched and constructed duct banks and repair and replace electrical conduit, cable, and wire installed in the ducts by others.	No occurrence	Insured's failure to construct ducts according to contract specifications is not an occurrence. Performance of contract according to terms is within the insured's control and management, and failure to perform cannot be described as an undesigned or unexpected event.

Missouri	Taylor-Morley-Simon, Inc. v. Michigan Mut. Ins. Co., 645 F. Supp. 596 (E.D. Mo. 1986), aff'd, 822 F.2d 1093 (1987)	Two years after homeowners took possession of their residents, they discovered that the concrete slab which supported a portion of their residence was sinking, allegedly because the slab was not supported by piers and the subsoil under the slab was not properly compacted. Because of the settling slab, the homeowners asserted that the walls and ceilings of the house started to crack, hot and cold water lines and gas lines under the slab had become stressed, and the heating and air-conditioning ducts had torn loose, leaving minimal heat in part of the house. They also noted that the sewer line was unsupported and claimed violation of building codes because the natural gas line installed under the slab was not properly protected by conduits and proper venting, and the heating ducts under the floor were not encased in 2 inches of concrete as required by the building code.	Occurrence	The alleged damage to the home satisfies the policy requirement that it be caused by an occurrence or accident resulting in property damage not expected or intended by the insured. The term accident is construed broadly and is not limited to an event which occurs suddenly. Thus, an accident includes that which happens by chance or fortuitously, without intention or design, and which is unexpected, unusual, and unforeseen. Damage within the coverage of a liability insurance policy may include that resulting from the insured's negligence.
Nebraska	Auto-Owners Ins. Co. v. Home Pride Ins. Cos., 684 N.W.2d 571 (Neb. 2004)	Owner of apartment buildings alleged that builder did not install roofing shingles in a workmanlike manner and that such faulty workmanship caused substantial and material damage to roof structures and buildings. The building owner also alleged that the shingles themselves were defective.	Occurrence	Faulty workmanship, standing alone, is not covered under a standard CGL policy because it is not a fortuitous event. However, an accident caused by faulty workmanship is a covered occurrence. In other words, if faulty workmanship causes bodily injury or property damage to something other than the insured's work product, an unintended and unexpected event has occurred, and coverage exists. Here, the building owners allege that the contractor negligently installed shingles on a number of apartments, which caused the shingles to fall off, and as a consequence of the faulty work, the roof structures and buildings have experienced substantial damage. This latter allegation represents an unintended and unexpected consequence of the contractors' faulty workmanship and goes beyond damages to the contractors' own work product. These allegations establish an occurrence.

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New Hampshire	High Country Assocs. v. New Hampshire Ins. Co., 648 A.2d 474 (N.H. 1994)	Condo association sued developer alleging that faulty design, selection of materials, construction, supervision and inspection of the condominium units resulted in substantial moisture seepage into the buildings, causing mildew and rotting of the walls, and loss of structural integrity continuing between 1983 and 1992.	Occurrence	The condo association alleged actual damage to the buildings caused by exposure to water seeping into the walls that resulted from the negligent construction methods. The damages claimed are for the water-damaged walls, not the dimunitation in value or cost of repairing work of inferior quality. Therefore, the property damage at issue, caused by continuous exposure to moisture through leaky walls, is not simply a claim for the contractor's defective work. Instead, the plaintiffs in the underlying suits alleged negligent construction that resulted in property damage.
New Jersey	Firemen's Ins. Co. of Newark v. National Union Fire Ins. Co., 904 A.2d 754 (N.J. Super. Ct. App. Div. 2006)	Condominium association sued developer and builder alleging defects in the construction of the condominiums.	No occurrence	Faulty workmanship is not an occurrence.
New York	Bonded Concrete, Inc. v. Transcontinental Ins. Co., 784 N.Y.S.2d 212 (N.Y. App. Div. 2004)	General contractor sued insured for allegedly supplying defective concrete for use in sidewalks on a school renovation project.	Not property damage	The gist of the claims in the underlying action is that the contractor provided an allegedly defective product, namely, concrete. The damages sought were the cost of correcting the defect, not damage to property other than the completed work itself.
North Carolina	William C. Vick Constr. Co. v. Pennsylvania Nat'l Mut. Cas. Ins. Co., 52 F. Supp. 2d 569 (E.D.N.C. 1999)	Roofing subcontractor installed waterproofing membrane upside down, resulting in numerous leaks and requiring numerous repairs.	No occurrence	The claims against the insured were based solely on the costs of repairing allegedly faulty workmanship, which does not constitute an occurrence within the meaning of the policies. An insured's poor workmanship does not fall within the meaning of the term accident, and thus does not constitute an occurrence.
North Dakota	ACUITY v. Burd & Smith Constr., Inc., 721 N.W.2d 33 (N.D. 2006)	After contractor replaced roof of apartment building, building owners sued contractor alleging that contractor failed to exercise reasonable care in replacing the roof, including failing to secure the premises against foreseeable water damage. The building owners essentially claimed that while replacing the roof, the contractor failed to protect the apartment building from rainstorms, which caused extensive water damage to the interior of the building. Additionally, two tenants claim they sustained property loss as a result of water damage and also sued the contractor.	Ocurrence	Property damage caused by faulty workmanship is a covered occurrence to the extent the faulty workmanship causes bodily injury or property damage to property other than the insured's work product. Since the building owners alleged damage to the interior of the apartment building, there is an occurrence covered by the policy.

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Ohio	**Dublin Bldg. Sys. v. Selective Ins. Co. of S.C., 874 N.E.2d 788 (Ohio Ct. App. 2007)**	**Subcontractor installed stucco and cultured stone on exterior of office building without sealing mortar joints, resulting in extensive mold growth on inside surfaces of exterior walls and tenant complaints of musty smells, eye irritations, and other health related problems.**	**Occurrence**	**Insured's defective workmanship on construction project constitutes insurable occurrence under a CGL policy. Plaintiffs' allegations of negligent faulty workmanship are sufficient to invoke the general coverage for property damage caused by an occurrence because negligent acts are not done with the intent or expectation of causing injury or damage.**
Ohio	Heile v. Herrmann, 736 N.E.2d 566 (Ohio Ct. App. 1999)	Homeowners sued builder alleging that defects in their home developed within a year of occupancy, including deterioration of driveway, walkway and front porch, leaking of the roof and basement, and problems with one of the steps to the porch, a Jacuzzi tub, windows, hardwood flooring, drywall, and bathroom tile.	No occurrence	Defective workmanship does not constitute an occurrence. Defective workmanship is not what is meant by the term "accident" under the definition of "occurrence." The policies do not provide coverage where the damages claimed are the cost of correcting the work itself." There is no occurrence here because the damages alleged by the homeowners all relate to the builder's or his subcontractors' own work, not to any consequential damages stemming from that work.
Ohio	American Home Assurance Co. v. Libbey-Owens-Ford Co., 786 F.2d 22 (1st Cir. 1986)	Manufacturer of windows installed in Hancock Building in Boston that failed during storms sued after architect determined that windows did not meet contract specifications and ordered them replaced.		Although plain language of policy requires some physical injury to tangible property other than for loss of use claims, policy did not preclude possibility that physical injury to window manufacturer's own property could constitute such property damage. Therefore, the policy covered consequential damages resulting from physical injury to the windows despite fact that policy did not cover damages for repair and replacement of windows.
Oregon	Oak Crest Constr. Co. v. Austin Mut. Ins. Co., 998 P.2d 1254 (Or. 2000)	General contractor sued insurer after insurer refused to reimburse cost of stripping and repainting cabinets painted by a subcontractor that did not cure properly.	No occurrence	The claim arose from a breach of contract and, therefore, is not covered by the policy because it was not caused by an accident.
Pennsylvania	Millers Capital Ins. Co. v. Gambone Bros. Dev. Co., 941 A.2d 706 (Pa. Super. Ct. 2007)	Homeowners who purchased homes from insured alleged that their homes suffered weeks as a result of construction defects and product failures in the homes' vapor barriers, windows, roofs, and stucco exteriors, and not be stucco used on the exterior of their homes was defective.	No occurrence	The damage at issue was not caused by an accident, and the policy thus provides no coverage.

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Pennsylvania	Gene & Harvey Builders, Inc. v. Pennsylvania Mfrs. Ass'n, Inc., 517 A.2d 910 (Pa. 1986)	Purchaser of lot contracted with builder to construct house. Less than two years after completion, the homeowners sued the contractor alleging that the land had subsided and had fallen away from the premises, and that this, along with defects in construction, caused doors to come ajar and floors to become unstable. The complaint further alleged that the house was useless because of the subsidence, and that sinkholes and subsidence on the land were known to the contractor, and the contractor concealed the subsidence by filling in sinkholes. The homeowners also alleged that the construction was performed negligently and in an unworkmanlike manner with knowledge of the defects and subsidence of the land.	No occurrence	The complaint alleges that the contractor performed negligently and in an unworkmanlike fashion, that he concealed the presence of sinkholes and filled them under cover of darkness, and that he misrepresented the condition of the premises to the homeowners. All these claims are excluded from coverage either because they are not occurrences, i.e. accidental events, or because they fall under either the your product or your work exclusions.
Rhode Island	Aetna Cas. & Sur. Co. v. Consulting Envtl. Eng'rs, Inc., 1989 WL 1110231 (R.I. Super. Ct., 1989) (unpublished)	Manhole covers and pipes installed by contractor on a sewer project based on plans and specifications prepared by design engineers unexpectedly settled, and contractor alleged negligent preparation of specifications, blueprints, and plans.	Ocurrence	Manhole covers and pipes that unexpectedly settled constitutes an occurrence.
South Carolina	Auto-Owners Ins. Co. v. Newman, 2008 WL 648546 (S.C. 2008)	Homeowner sued builder alleging that application of stucco did not conform to industry standards, thereby allowing water to seep into the home causing severe damage to the home's framing and exterior sheathing.	Occurrence	The continuous water intrusion into the home resulting from the subcontractor's negligent application of stucco is an accident involving continuous or repeated exposure to substantially the same harmful conditions and led to an occurrence involving coverage under the CGL policy for the resulting property damage to other property and not to the work product.
South Carolina	Okatie Hotel Group, LLC v. Amerisure Ins. Co., 2006 WL 91577 (D.S.C. 2006)	Subcontractors improperly performed work during construction of hotel resulting in extensive moisture damage.	Occurrence	Plaintiffs alleged property damage beyond damage to the work product or the performance of the task itself. Although damage to work product alone, caused by faulty workmanship, does not constitute an occurrence, the property damage to plaintiff's hotel caused by exposure to the harmful condition of leaks and moisture does constitute an occurrence.

Drywall Analogies:
Is faulty construction an occurrence?

South Carolina	Nas Sur. Group v. Precision Wood Prods., Inc., 271 F. Supp. 2d 776 (M.D.N.C. 2003)	Insured hired to provide cabinets and millwork for renovation project. Extensive defects were discovered after the cabinetry and millwork were installed, including delamination of the countertops and inadequate construction of drawers and doors.	No occurrence	The costs to repair and replace the defective cabinetry and millwork, standing alone, are foreseeable and thus, not caused by an occurrence and are not covered by the CGL policy. Similarly, the costs to repair drywall, repaint walls and reinstall sinks, wiring and plumbing incident to the replacement of the insured's defective workmanship are the foreseeable consequences of the replacement of defective work. As such, they are not accidents, and thus not caused by an occurrence.
South Carolina	C.D. Walters Constr. Co. v. Fireman's Ins. Co. of Newark, N.J., 316 S.E.2d 709 (S.C. Ct. App. 1984)	Insured contracted to perform clearing operations for a roadway and to excavate and prepare a pond. The property owner alleged that the contractor performed in a careless, negligent, willful, wanton and unworkmanlike manner, claiming that the contractor cut down trees and dug a ditch contrary to specific instructions. The property owner also alleged breach of contract and trespass upon the property.	Exclusion applies	The CGL policy does not cover faulty workmanship, but rather faulty workmanship which causes an accident.
Tennessee	Travelers Indem. Co. of Am. v. Moore & Assocs., Inc., 216 S.W.3d 302 (Tenn. 2007)	Design and building contractor for hotel filed arbitration demand against window subcontractor alleging: "Poor and negligent design, supervision and implementation of the window installation, resulting in water and moisture penetration, which in turn has caused pervasive premature deterioration of and damage to other components of the interior and exterior wall structure, and some room finishes and fixtures. Mold has been found in some locations. Rooms have had to be taken out of service for mold remediation and for water damage repair."	Occurrence	Assuming that the windows had been installed properly, the insured could not have foreseen the water penetration. Because the court concludes that the water penetration was an event that was unforeseeable to the insured, the alleged water penetration is both an accident an occurrence.
Texas	**Lamar Homes, Inc., v. Mid-Continent Cas. Co., 242 S.W.3d 1 (Tex. 2007)**	**Several years after they purchased home, homeowners encountered problems that they attributed to defects in their foundations.**	**Occurrence**	**CGL policy does not define "occurrence" in terms of the ownership or character of the property damaged by the act or event. Rather, the policy asks whether the injury was intended or fortuitous, that is, whether the injury was an accident. Here, the complaint alleges an "occurrence" because it asserts that Lamar's defective construction was a product of its negligence. No one alleges that Lamar intended or expected its work to damage the home.**

Drywall Analogies:
Is faulty construction an occurrence?

Texas	**Lennar Corp. v. Great Am. Ins. Co., 200 S.W.3d 651 (Tex. App. 2006)**	**Builder applied synthetic stucco to numerous homes and builder later determined that the material was defectively designed, so that it trapped water behind it and did not allow the water to drain, causing damage such as wood rot, mold, and termite infestation, among other problems. Builder then replaced all of the synthetic stucco with traditional stucco and sought the replacement cost from its insurers.**	Occurrence	Negligently created, or inadvertently, defective construction resulting in damage to the insured's own work that is unintended and unexpected can constitute an "occurrence."
Texas	Acceptance Ins. Co. v. Newport Classic Homes, 2001 WL 1478791 (N.D. Tex. 2001)	Residential homebuilder sued by homeowners for negligence, gross negligence, breach of contract, breach of warranty, and fraud, alleging faulty design and construction of their home.	No occurrence	The complaint alleges that the damage to the home was the result of the builder's failure to build the house in a good and workmanlike manner and failure to comply with building codes. The alleged failure to comply with building codes supports a finding that the damage was not accidental because such damages were the natural consequences of the builder's noncompliance and, thus, should have reasonably been anticipated by the builder. Therefore, there is no occurrence.
Texas	Federated Mut. Ins. Co. v. Grapevine Excavation, Inc. 197 F.3d 720 (5th Cir. 1999)	After discovery of damage to work performed by paving subcontractor, building owner sued excavation contractor who provided inadequate fill that did not meet specifications.	Occurrence	Parking lot damage resulting from installation of substandard fill material constituted an occurrence. Damage to parking lot caused by negligent construction constituted an accident because it was an unexpected, unforeseen or undesigned happening or consequence.
Washington	Gruol Constr. Co. v. Insurance Co. of N. Am., 524 P.2d 427 (Wash. Ct. App. 1974)	Insured piled dirt against box sills of apartment building by backfilling during construction causing dry rot.	Occurrence	There is substantial evidence that the dry rot came within the definition of accident and occurrence as used in the policies at issue. The insured testified that he had no knowledge of the defective backfilling or concrete work until it was discovered, that the defective condition was not observable after a concrete cap was placed over the dirt and after completion of the building, and that the damage caused by dry rot was not foreseeable.
Wisconsin	Stuart v. Weisflog's Showroom Gallery, Inc., 753 N.W.2d 448 (Wis. 2008)	Homeowners sued the insured for damages resulting from alleged misrepresentations, and design and construction defects, related to a home remodeling project.	No occurrence	Misrepresentations about professional ability do not amount to an occurrence.
Wisconsin	Kalchthaler v. Keller Constr. Co., 591 N.W.2d 169 (Wis. Ct. App. 1999)	Building leaked causing water damage to the interior.	Occurrence	Windows leaking as result of negligent installation is an occurrence.

Drywall Analogies:
Which policies are triggered?

State / Province	Citation	Type of Case	Facts	Finding	Comments
Alabama	Commercial Union Ins. Co. v. Sepco Corp., 765 F.2d 1543 (11th Cir. 1985)	Asbestos BI	Insured sought coverage for asbestos bodily injury claims.	Exposure	Court found that undisputed medical evidence supported the exposure theory.
Alaska	Mapco Alaska Petroleum, Inc. v. Central Nat'l Ins. Co. of Omaha, 795 F. Supp. 941 (D. Alaska 1991)	Environ. PD	Insured sought coverage for groundwater pollution resulting from the release of crude oil from a petroleum refinery.	Exposure	Coverage is triggered by exposure to contaminants rather than by manifestation of the damage.
California	Armstrong World Indus., Inc. v. Aetna Cas. & Sur. Co., 52 Cal. Rptr. 2d 690 (Cal. Ct. App. 1996)	Asbestos PD	Insured sought coverage for asbestos building claims.	Injury-in-fact	Coverage is triggered if any part of the underlying property damage -- installation, release, or reentrainment -- took place during a policy period.
California	Armstrong World Indus., Inc. v. Aetna Cas. & Sur. Co., 52 Cal. Rptr. 2d 690 (Cal. Ct. App. 1996)	Asbestos BI	Insured sought coverage for asbestos bodily injury claims.	Continuous	All policies in effect from first exposure to asbestos until the date of death or date of claim, whichever occurs first, are triggered.
California	Montrose Chem. Corp. v. Admiral Ins. Co., 913 P.2d 878 (Cal. 1995)	Environ. PD	Insured sought a defense to various lawsuits which involved pollution arising from the insured's disposal of waste at various landfills.	Continuous	Bodily injury and property damage that is continuous or progressively deteriorating throughout several policy periods is potentially covered by all policies in effect during those periods.
Colorado	Hoang v. Assuarance Co. of Am., 149 P.3d 798 (Colo. 2007)	Construction Defect	Buyers of homes sought to recover from builder's insurer for construction defects.	Injury-in-fact	There is coverage for injury or damage that occurs during the policy period, regardless of when the claim is presented.
Connecticut	Aetna Cas. & Sur. Co. v. Abbott Labs., Inc., 636 F. Supp. 546 (D. Conn. 1986)	DES BI	Insured sought coverage for DES bodily injury claims.	Injury-in-fact	Coverage is triggered for DES-related injuries upon occurrence of injury-in-fact during the policy period.

Drywall Analogies:
Which policies are triggered?

State / Province	Citation	Type of Case	Facts	Finding	Comments
Delaware	Hercules, Inc. v. Aetna Cas. & Sur. Co., 1998 WL 962089 (Del. Super. Ct. 1998)	Environ. PD	Insured sought coverage for pollution arising out of its operation of a chemical manufacturing plant.	Continuous	A continuous trigger applies to continuous damage, and each insurer as well as the insured for self-insured periods is liable for a pro rata share of damages.
District of Columbia	Keene Corp. v. Insurance Co. of N. Am., 667 F.2d 1034 (D.C. Cir. 1981), cert. denied, 455 U.S. 1007 (1982)	Asbestos BI	Insured sought coverage for asbestos bodily injury claims.	Continuous	Court found that bodily injury means any part of the single injurious process from exposure through exposure in residence to manifestation. All policies on risk are jointly and severally liable in full, and insured is entitled to select the policy to cover the loss.
Florida	**Harris Spec. Chems, Inc. v. United States Fire Ins. Co., 2000 WL 34533982 (M.D. Fla. 2000)**	**Property Damage**	**Insured sought coverage for damage to buildings caused by a defective water sealant product.**	**Manifestation**	**Coverage is triggered only at the time that damage manifests itself.**
Florida	**Trizec Props., Inc. v. Biltmore Constr. Co., 767 F.2d 810 (11th Cir. 1985)**	**Construction Defect**	**Insured was accused of negligent construction of the roof of a shopping mall.**	**Injury-in-fact**	**Court held that actual damage must occur during the policy period for there to be coverage.**
Georgia	Briggs & Stratton Corp. v. Royal Globe Ins. Co., 64 F. Supp. 2d 1346 (M.D. Ga. 1999)	Environ. PD	Insured sought coverage for pollution damage resulting from discharges of untreated waste water into unlined surface impoundments.	Exposure	The court finds that the "exposure" trigger of coverage is applicable.
Georgia	Boardman Petroleum, Inc. v. Federated Mut. Ins. Co., 926 F. Supp. 1566 (S.D. Ga. 1995), rev'd on other grounds, 150 F.3d 1327 (11th Cir. 1998)	Environ. PD	Insured sought a defense to state agency letters requesting cleanup of underground petroleum contamination at two gasoline stations.	Exposure	Exposure during dates of coverage to conditions that result in property damage constitutes an occurrence.

Drywall Analogies:
Which policies are triggered?

State / Province	Citation	Type of Case	Facts	Finding	Comments
Hawaii	**Sentinel Ins. Co. v. First Ins. Co. of Haw., Ltd., 875 P.2d 894 (Haw. 1994)**	**Construction Defect**	**Insured sought coverage for claim involving water infiltration damage to an apartment complex.**	**Injury-in-fact**	**Where injury-in-fact occurs continuously over a period covered by different insurers or policies, a continuous trigger may be employed to equitably apportion liability among insurers.**
Illinois	Travelers Ins. Co. v. Eljer Mfg., Inc., 757 N.E.2d 481 (Ill. 2001)	Property Damage	Insured sought coverage for claims involving defective polybutylene pipes.	Injury-in-fact	Under the unambiguous terms of the policy, no "physical injury to tangible property" occurred when the plumbing system was installed in homes that did not experience leaks.
Illinois	Benoy Motor Sales, Inc. v. Universal Underwriters Ins. Co., 679 N.E.2d 414 (Ill. App. Ct. 1997)	Environ. PD	Insured sought coverage for pollution damage resulting from the disposal of waste oil at a landfill.	Continuous	Damage resulting from the discharge of pollutants is a continuing process and does not stop and start in discrete time periods.
Illinois	Outboard Marine Corp. v. Liberty Mut. Ins. Co., 670 N.E.2d 740 (Ill. App. Ct. 1996)	Environ. PD	Insured sought coverage for PCB contamination of Waukegan Harbor.	Continuous	All policies in effect during the time of release of pollutants are triggered and each policy, or the insured for uninsured years, is responsible for a pro rata, time-on-the-risk allocation.
Illinois	United States Gypsum Co. v. Admiral Ins. Co., 643 N.E.2d 1226 (Ill. App. Ct. 1994)	Asbestos PD	Insured sought coverage for asbestos building claims.	Continuous	All policies from the exposure to, or installation of, asbestos to manifestation or discovery of damage are triggered.
Illinois	**Zurich Ins. Co. v. Raymark Indus., Inc., 514 N.E.2d 150 (Ill. 1987)**	**Asbestos BI**	**Insured sought coverage for asbestos bodily injury claims.**	**Injury-in-fact**	**Court found that injury-in-fact occurred during the period of asbestos exposure as well as at the time of the date of diagnosis.**

Drywall Analogies:
Which policies are triggered?

State / Province	Citation	Type of Case	Facts	Finding	Comments
Indiana	Dana Corp. v. Hartford Accident & Indem. Co., No. 49D01-9301-CP-0026 (Ind. Super. Ct. Sept. 10, 1996), reprinted in 10 Mealey's Ins. Litig. Rep. No. 43, Section A (Sept. 17, 1996)	Environ. PD	Insured sought coverage for numerous pollution claims.	Injury-in-fact	An actual injury must occur during the time the policy is in effect in order to be indemnifiable, and each triggered policy is liable only for that portion of the damage that resulted during that particular policy period, and the insured is responsible for uninsured periods.
Indiana	Eli Lilly & Co. v. Home Ins. Co., 482 N.E.2d 467 (Ind. 1985), cert. denied, 479 U.S. 1060 (1987)	DES BI	Insured sought coverage for DES bodily injury claims.	Continuous	Coverage is triggered for any policy in effect from date of ingestion of the drug through date of manifestation.
Kansas	Atchison Topeka & Santa Fe Ry. v. Stonewall Ins. Co., 71 P.3d 1097 (Kan. 2003)	Hearing Loss BI	Insured sought coverage for numerous noise-induced hearing loss claims.	Continuous	All policies are triggered from first exposure to manifestation of injury.
Kansas	Cessna Aircraft Co. v. Hartford Accident & Indem. Co., 900 F. Supp. 1489 (D. Kan. 1995)	Environ. PD	Insured sought coverage for groundwater contamination resulting from releases from its manufacturing facility.	Injury-in-fact	Injury occurs when damage actually takes place, not at the time of manifestation.
Louisiana	**James Pest Control, Inc. v. Scottsdale Ins. Co., 765 So. 2d 485 (La. Ct. App. 2000)**	**Property Damage**	**Insured sought coverage for termite damage to a condominium.**	**Manifestation**	**The manifestation theory is applicable and the effects of the termite infestation in the condominiums did not become "damage" until the homeowners discovered it.**
Louisiana	St. Paul Fire & Marine Ins. Co. v. Valentine, 665 So. 2d 43 (La. Ct. App. 1995)	Property Damage	Insured sought coverage for fire damage caused by the faulty installation of an air-conditioning system.	Manifestation	The date when negligence manifests itself by causing actual damage is generally the time of the occurrence.
Louisiana	**Cole v. Celotex Corp., 599 So. 2d 1058 (La. 1992)**	**Asbestos BI**	**Executive officers and directors of insured sought coverage for asbestos claims filed against them.**	**Exposure**	**The insurer is on the risk for each policy period during which a plaintiff was exposed to asbestos dust.**

Drywall Analogies:
Which policies are triggered?

State / Province	Citation	Type of Case	Facts	Finding	Comments
Maine	Honeycomb Sys., Inc. v. Admiral Ins. Co., 567 F. Supp. 1400 (D. Me. 1983)	Product Liability	Insured manufactured a dryer which had problems with welds in 1975 and which sustained cracks in 1977.	Manifestation	Court found that an occurrence happens when the injurious effects of the occurrence become apparent or manifest themselves.
Maryland	Maryland Cas. Co. v. Hanson, 902 A.2d 152 (Md. Ct. Spec. App. 2006)	Lead BI	Insured sought coverage under multiple successive policies for lead poisoning sustained by several children in an apartment.	Injury-in-fact	Proof of repeated exposure to lead, which results in lead-based poisoning injuries that continue for several years with continuous exposure, triggers coverage under all applicable policies.
Maryland	Chantel Assoc. v. Mount Vernon Fire Ins. Co., 656 A.2d 779 (Md. 1995)	Lead BI	Insured sought coverage for bodily injuries resulting from the ingestion of lead paint chips.	Exposure	Coverage is triggered during any policy period in which a claimant ingested lead paint.
Maryland	Harford County v. Harford Mut. Ins. Co., 610 A.2d 286 (Md. 1992)	Environ. PD	County sought coverage for pollution at various landfills which it operated.	Injury-in-fact	Manifestation is not the sole trigger of coverage, and coverage may be triggered earlier upon proof of detectable property damage during a policy period.
Massachusetts	**Rubenstein v. Royal Ins. Co. of Am., 694 N.E.2d 381 (Mass. App. Ct. 1998), aff'd, 708 N.E.2d 639 (Mass. 1999)**	**Environ. PD**	**Insured sought coverage for pollution resulting from leaking underground storage tanks.**	**Continuous**	**Coverage is triggered under all policies in effect when the property was being continuously contaminated by oil, and each triggered policy is jointly and severally liable for the entire claim.**
Massachusetts	United States Liab. Ins. Co. v. Selman, 70 F.3d 684 (1st Cir. 1995)	Lead BI	Insured sought coverage for bodily injury claims resulting from the ingestion of lead paint.	Exposure	Coverage is triggered at the time of exposure where the claimant suffered new and further injuries during the policy period.

Drywall Analogies:
Which policies are triggered?

State / Province	Citation	Type of Case	Facts	Finding	Comments
Massachusetts	Liberty Mut. Ins. Co. v. Commercial Union Ins. Co., 978 F.2d 750 (1st Cir. 1992)	Asbestos BI	Insured sought coverage for occupational disease claims arising out of asbestos.	Manifestation	Coverage for occupational disease claims falls upon the last insurer on the date of disability, as determined by the date of decreased earning capacity.
Michigan	Arco Indus. Corp. v. American Motorists Ins. Co., 594 N.W.2d 61 (Mich. Ct. App. 1998), aff'd, 617 N.W.2d 330 (Mich. 2000)	Environ. PD	Insured sought coverage for groundwater contamination arising out of its operation of a manufacturing facility.	Injury-in-fact	Each insurer is only responsible for coverage during its policy period based on a "time-on-the-risk" approach.
Minnesota	**Wooddale Builders, Inc. v. Maryland Cas. Co., 722 N.W.2d 283 (Minn. 2006)**	**Construction Defect**	**Insured sought coverage for various construction defect claims filed against it.**	**Continuous**	**The insurers on the risk for a claim are those insurers that provided coverage between the closing date of the home and the date the insured received notice of the claim, and all insurers are deemed on the risk for the entire period of each triggered policy.**
Minnesota	Domtar, Inc. v. Niagara Fire Ins. Co., 563 N.W.2d 724 (Minn. 1997)	Environ. PD	Insured sought coverage for pollution arising out of the insured's operation of a tar refining plant.	Continuous	Each insurer is liable only for that period of time it was on the risk compared to the entire period during which damages occurred.
Minnesota	SCSC Corp. v. Allied Mut. Ins. Co., 536 N.W.2d 305 (Minn. 1995)	Environ. PD	Insured sought coverage for pollution damage after it received an information request from state pollution control agency.	Injury-in-fact	Where the fact-finder concludes that property damage arose in a single year, from a sudden and accidental occurrence, and concludes that the damage was not divisible, only policies in effect in the year the property damage arose are triggered.

Drywall Analogies:
Which policies are triggered?

State / Province	Citation	Type of Case	Facts	Finding	Comments
Mississippi	W. R. Grace Co. v. Maryland Cas. Co., No. 89-5138 (Miss. Cir. Ct. 1991)	Asbestos PD	Insured sought coverage for settlement of asbestos building claims.	Continuous	Damage to building from asbestos products occurs at the time such products are in place and the damage continues as long as the building contains the products.
Missouri	Monsanto Co. v. Aetna Cas. & Sur. Co., 1994 WL 161953 (Del. Super. Ct.), rev'd on other grounds, 652 A.2d 30 (Del. 1994)	Environ. BI & PD	Insured sought coverage for various bodily injury and property damage claims arising out of the release of contaminants.	Injury-in-fact	Coverage is triggered by a showing of actual injury or damage during the policy period, not the negligent act.
New Jersey	Quincy Mut. Fire Ins. v. Borough of Bellmawr, 799 A.2d 499 (N.J. 2002)	Environ. PD	Insured sought coverage for pollution resulting from the disposal of hazardous waste into a landfill.	Continuous	Exposure relating to the Borough's initial depositing of toxic waste into a landfill is the first trigger of coverage under the continuous trigger theory.
New Jersey	Carter-Wallace, Inc. v. Admiral Ins. Co., 712 A.2d 1116 (N.J. 1998)	Environ. PD	Insured sought coverage for pollution arising out of its disposal of waste at a landfill.	Continuous	Damages should be allocated among years based upon the amount of risk assumed by the insured and insurers in each year and then allocated vertically among policies in each year based upon full policy limits.
New Jersey	Owens-Illinois, Inc. v. United Ins. Co., 650 A.2d 974 (N.J. 1994)	Asbestos BI & PD	Insured sought coverage for asbestos bodily injury and asbestos building claims.	Continuous	Each insurer on the risk between initial exposure to asbestos (installation in a building) and manifestation of disease (discovery or remediation) is liable for defense and indemnity.
New Jersey	Diamond Shamrock Chems. Co. v. Aetna Cas. & Sur. Co., 609 A.2d 440 (N.J. Super. Ct. App. Div. 1992)	Dioxin BI	Diamond sought coverage for its settlement of the Agent Orange case.	Injury-in-fact	Court found that the simple exposure to dioxin is injury-in-fact. Coverage was therefore triggered four months after delivery of a given shipment of Agent Orange to the military.

Drywall Analogies:
Which policies are triggered?

State / Province	Citation	Type of Case	Facts	Finding	Comments
New York	Travelers Ins. Co. v. Eljer Mfg., Inc., 757 N.E.2d 481 (Ill. 2001)	Property Damage	Insured sought coverage for claims involving defective polybutylene pipes.	Injury-in-fact	If installation of potentially defective plumbing system caused a diminution of value of home greater than the value of the plumbing system itself, injury to tangible property occurred under policies governed by New York law.
New York	E.R. Squibb & Sons, Inc. v. Lloyd's & Cos., 241 F.3d 154 (2d Cir. 2001)	DES BI	Insured sought coverage for bodily injury claims asserted by women who ingested DES, the children of women who ingested DES, and the grandchildren of women who ingested DES.	Injury-in-fact	For second-generation claimants, injury-in-fact includes predisposition to illness or disability as a result of cell mutation caused by DES. For third-generation claimants, injury-in-fact includes causal consequences of injuries-in-fact to the reproductive systems of second-generation claimants that took place during the period of coverage.
New York	In re Prudential Lines, Inc., 158 F.3d 65 (2d Cir. 1998)	Asbestos BI	Insured sought coverage for asbestos bodily injury claims.	Injury-in-fact	The insured has the right to demand that a policy pay full coverage for each insurance claim in which the underlying claimant suffered asbestos exposure and therefore asbestos injury during the policy period.
New York	Maryland Cas. Co. v. W.R. Grace & Co., 23 F.3d 617 (2d Cir. 1993), cert. denied, 513 U.S. 1052 (1994)	Asbestos PD	Insured sought coverage for asbestos building claims.	Injury-in-fact	Property damage in fact occurs upon the installation in buildings of products containing asbestos and exists regardless of whether it has been discovered by building owners; this injury to property does not continue after that event.
North Carolina	Home Indem. Co. v. Hoechst Celanese Corp., 494 S.E.2d 774 (N.C. Ct. App. 1998)	Environ. PD	Insured sought coverage for pollution arising out of its operation of a polyester manufacturing plant.	Manifestation	Property damage occurs when it is manifested or discovered.

Drywall Analogies:
Which policies are triggered?

State / Province	Citation	Type of Case	Facts	Finding	Comments
North Carolina	Imperial Cas. & Indem. Co. v. Radiator Specialty Co., 862 F. Supp. 1437 (E.D.N.C. 1994), aff'd, 67 F.3d 534 (4th Cir. 1995)	Asbestos BI	Insured sought coverage for asbestos bodily injury claims.	Exposure	The date on which coverage is triggered is the date on which the first exposure to injury-causing conditions occurred.
Ohio	Owens-Corning Fiberglas Corp. v. American Centennial Ins. Co., 660 N.E.2d 770 (Ohio Com. Pleas Ct. 1995)	Asbestos BI	Insured sought coverage for asbestos bodily injury claims.	Continuous	All policies in effect from initial exposure until diagnosis or death are triggered, and each triggered policy is obligated to pay in full the claim, subject to policy limits.
Oregon	St. Paul Fire & Marine Ins. Co. v. McCormick & Baxter Creosoting Co., 923 P.2d 1200 (Or. 1996)	Environ. PD	Insured sought coverage for pollution arising out of its operation of several wood treatment plants.	Injury-in-fact	If property is injured during the policy period, coverage is triggered regardless of when the property damage is discovered or when the insured's liability becomes fixed.
Pennsylvania	Babcock & Wilcox Co. v. American Nuclear Insurers, 2002 WL 31749119 (Pa. Super. Ct. 2002)	Environ. BI & PD	Insured sought coverage for bodily injury and property damage caused by radioactive emissions from the insured's facility.	Manifestation	The date of manifestation of injury is the appropriate date for determining the applicable policy and coverage limits.
Pennsylvania	Rockwood Cas. Ins. Co. v. American Mining Ins. Co., No. G.D. 98-5324 (Pa. Com. Pleas Ct. Aug. 6, 1999), reprinted in 13 Mealey's Ins. Litig. Rep. No. 40, Section D (Aug. 24, 1999), aff'd per curium, 754 A.2d 30 (Pa. Super. Ct. 2000)	Property Damage	Insured sought coverage for structural property damage caused by its mining operations.	Manifestation	An occurrence happens for purposes of insurance when the injurious effects of the negligent act first manifest itself.
Pennsylvania	Koppers Co. v. Aetna Cas. & Sur. Co., 98 F.3d 1440 (3d Cir. 1996)	Environ. PD	Insured sought coverage for numerous environmental claims.	Continuous	Environmental property damage is a progressive harm, and all triggered policies are jointly and severally liable subject to reallocation based on the "other insurance" clause.

Drywall Analogies:
Which policies are triggered?

State / Province	Citation	Type of Case	Facts	Finding	Comments
Pennsylvania	J.H. France Refractories Co. v. Allstate Ins. Co., 626 A.2d 502 (Pa. 1993)	Asbestos BI	Insured sought coverage for asbestos bodily injury cases.	Continuous	Each insurer on the risk from first exposure to manifestation is responsible for full defense and indemnity, subject only to policy limits and applicability of the "other insurance" clause.
Rhode Island	Truk-Away of R.I., Inc. v. Aetna Cas. & Sur. Co., 723 A.2d 309 (R.I. 1999)	Environ. PD	Insured sought coverage for pollution damage resulting from its storage and transportation of hazardous waste to a landfill.	Manifestation	There is no occurrence under the policy without property damage that becomes apparent during the policy period.
Rhode Island	CPC Int'l, Inc. v. Northbrook Excess & Surplus Ins. Co., 668 A.2d 647 (R.I. 1995)	Environ. PD	Insured sought coverage for pollution arising out of its operation of a manufacturing facility.	Manifestation	Coverage is triggered by an occurrence that takes place when property damage, which includes property loss, manifests or is discovered or in the exercise of reasonable diligence is discoverable.
South Carolina	Stonehenge Eng'g Corp. v. Employers Ins. of Wausau, 201 F.3d 296 (4th Cir. 2000)	Construction Defect	Insured sought coverage for construction defect claims involving defective buildings.	Injury-in-fact	Coverage is triggered by all policies in effect from the time the complainant was actually damaged and continuously thereafter until the end of the progressive damage, even if damage continues after discovery.
South Carolina	Spartan Petroleum Co. v. Federated Mut. Ins. Co., 162 F.3d 805 (4th Cir. 1998)	Environ. PD	Insured sought coverage for pollution damage resulting from a leaking underground gasoline storage system.	Injury-in-fact	Damage to the property of the underlying claimant must occur during the policy period and, in cases of continuous damage, all policies and the insured (in cases of no coverage) are responsible for a pro rata share of damages.

Drywall Analogies:
Which policies are triggered?

State / Province	Citation	Type of Case	Facts	Finding	Comments
South Carolina	Joe Harden Builders, Inc. v. Aetna Cas. & Sur. Co., 486 S.E.2d 89 (S.C 1997)	Construction Defect	Insured sought coverage for progressive property damage caused by defective construction.	Injury-in-fact	Coverage is triggered at the time of an injury-in-fact and continuously thereafter to allow coverage under all policies in effect from the time of injury-in-fact throughout the entire time of the progressive damage.
Texas	Don's Bldg. Supply, Inc. v. OneBeacon Ins. Co., 267 S.W.3d 20 (Tex. 2008)	Construction Defect	CGL insurer sought declaratory judgment of no duty to defend or indemnify insured distributor of synthetic stucco product against homeowners' suits alleging negligence, fraud, and violations of the Deceptive Trade Practices Act.	Injury-in-fact	Property damage under CGL policy occurred when actual physical damage to the property occurred, not when the damage was or could have been discovered.
Texas	Guaranty Nat'l Ins. Co. v. Azrock Indus., Inc., 211 F.3d 239 (5th Cir. 2000)	Asbestos BI	Insured sought coverage for numerous asbestos bodily injury claims.	Exposure	Injury takes place at the time of exposure to or inhalation of asbestos fibers.
Texas	Union Pac. Res. Co. v. Continental Ins. Co., No. 249-23-98 (Tex. Dist. Ct. Dec. 17, 1998), reprinted in 13 Mealey's Ins. Litig. Rep. No. 11, Section A (Jan. 19, 1999)	Environ. PD	Insured sought coverage for various environmental claims.	Injury-in-fact	Coverage is triggered by the occurrence of actual personal injury or property damage during the policy period, regardless of whether such injury or damage is manifested, discovered or known during the policy period.
Texas	Bristol-Myers Squibb Co. v. AIU Ins. Co., 1995 WL 861100 (Tex. Dist. Ct. 1995)	Breast Implant BI	Insured sought coverage for numerous breast implant claims filed against it.	Continuous	Damage or injury, in the case of toxic or harmful substances, begins with the first exposure and continues up to and through the manifestation of illness.

Drywall Analogies:
Which policies are triggered?

State / Province	Citation	Type of Case	Facts	Finding	Comments
Texas	Gulf Chem. & Metallurgical Corp. v. Associated Metals & Minerals Corp., 1 F.3d 365 (5th Cir. 1993)	Environ. BI	Insured sought coverage for bodily injury claims arising out of exposure to chemicals used in a steel mill.	Continuous	All insurers, and the insured, must share equally in the defense until there can be adjustments for the defense as to each claimant based on a pro rata sharing between the insurers and the insured.
Utah	Quaker State Minit-Lube, Inc. v. Fireman's Fund Ins. Co., 868 F. Supp. 1278 (D. Utah 1994), aff'd, 52 F.3d 1522 (10th Cir. 1995)	Environ. PD	Insured received a PRP letter and sought coverage for pollution arising out of its disposal of waste oil at a waste oil recycling facility.	Injury-in-fact	Coverage is triggered each time hazardous waste such as waste oil was discharged onto the property.
Vermont	State of Vt. v. CNA Ins. Cos., 779 A.2d 662 (Vt. 2001)	Environ. PD	Insured sought coverage for environmental cleanup damage sought from it in an administrative proceeding.	Injury-in-fact	Where there is no evidence of damage from the date of discharge of pollutants in the 1950s and the discovery of pollution in the 1990s, a continuous trigger does not apply.
Washington	Skinner Corp. v. Fireman's Fund Ins. Co., 1996 WL 376657 (W.D. Wash. 1996)	Asbestos BI	Insured sought coverage for asbestos bodily injury claims under a marine insurance policy.	Continuous	Every policy throughout the injury-causing process is triggered for the entire amount of the covered loss.
Washington	Time Oil Co. v. Cigna Prop. & Cas. Ins. Co., 743 F. Supp. 1400 (W.D. Wash. 1990)	Environ. PD	Insured was sued for contamination arising out of its operation of an oil recycling facility.	Continuous	Court noted that the parties had agreed that the State of Washington had adopted a continuous damage theory.
West Virginia	Wheeling Pittsburgh Corp. v. American Ins. Co., 2003 WL 23652106 (W. Va. Cir. Ct. 2003)	Environ. PD	Insured sought coverage for pollution damage at four sites.	Continuous	All policies in effect during the triggered periods may be potentially involved to provide coverage for property damage proven to be continuous or progressively deteriorating throughout several policy periods.

Drywall Analogies:
Which policies are triggered?

State / Province	Citation	Type of Case	Facts	Finding	Comments
Wisconsin	Society Ins. v. Town of Franklin, 607 N.W.2d 342 (Wis. Ct. App. 2000)	Environ. PD	Insured sought coverage for costs of cleaning up contamination at the town dump.	Continuous	All policies in effect while the occurrence was ongoing are triggered for their full limits.
Wisconsin	Wisconsin Elec. Power Co. v. California Union Ins. Co., 419 N.W.2d 255 (Wis. Ct. App. 1987)	Negligence PD	Insured sought coverage for injuries to dairy cows due to stray voltage from an improper power supply, which took place over a 12-year period.	Continuous	The occurrence triggering coverage began with the installation of the power supply in 1970 and continued uninterrupted until the problem was resolved in 1982.
Wisconsin	Kremers-Urban Co. v. American Employers Ins. Co., 351 N.W.2d 156 (Wis. 1984)	DES BI	Insured sought coverage for DES bodily injury claims.	Exposure	Court held that ingestion of the drug during the policy period triggered coverage even though the injury manifested itself years later.

Drywall Analogies:
How many occurrences?

State / Province	Citation	Type of Case	Facts	Finding	Comments
Alabama	Home Indem. Co. v. City of Mobile, 749 F.2d 659 (11th Cir. 1984)	Property Damage	Following three separate rainfalls, there was widespread flooding due to defects in the city's drainage system.	Multiple occurrences	Court rejected insurer's argument that there were only three occurrences--the three rainfalls and subsequent flooding. Instead, the court found a separate occurrence for each discrete act or omission of the city which caused water to flood rather than drain properly.
Arkansas	Fireman's Fund Ins. Co. v. Scottsdale Ins. Co., 968 F. Supp. 444 (E.D. Ark. 1997)	Bodily Injury	Insured sought coverage for numerous bodily injury claims arising out of the sale of contaminated food.	Single occurrence	Multiple sales of contaminated food to several customers is one occurrence because all injuries were caused by the improper preparation, storage and handling of food.
Arkansas	Travelers Indem. Co. v. Olive's Sporting Goods, Inc., 764 S.W.2d 596 (Ark. 1989)	Negligence	Insured sold several weapons to a purchaser who later shot several persons.	Single occurrence	Using the cause approach, the court found that the single occurrence was the sale of the weapons in a single transaction. The court noted that a different result would in effect put a no-limit policy into effect.
California	**London Market Insurers v. Truck Ins. Exchange, 53 Cal. Rptr. 3d 154 (Cal. Ct. App. 2007)**	**Asbestos BI**	**Insured sought coverage for numerous asbestos bodily injury claims.**	**Multiple occurrences**	**The word "occurrence" means injurious exposure to asbestos, and all asbestos exposure cannot be treated as a single occurrence.**
California	Flintkote Co. v. General Accident Assur. Co. of Can., 2006 WL 13077 (N.D. Cal. 2006)	Asbestos BI	Insured sought coverage for numerous asbestos bodily injury claims.	Multiple occurrences	An occurrence is exposure to asbestos that causes and immediately precedes an injury giving rise to liability under the policy.
California	Lexington Ins. Co. v. Travelers Indem. Co. of Ill., 2001 WL 1132677 (9th Cir. 2001) (unpublished)	Property Damage	Insured sought coverage for damage caused by arson at four different courthouses.	Multiple occurrences	Four separate fires, set by one arsonist in four separate building, at four separate locations constitute four occurrences.

Drywall Analogies:
How many occurrences?

State / Province	Citation	Type of Case	Facts	Finding	Comments
California	Employers Ins. of Wausau v. Granite State Ins. Co., No. 92-0406 (C.D. Cal. Mar. 14, 2001), reprinted in 15 Mealey's Ins. Litig. Rep. No. 22, Section E (Apr. 10, 2001) (subsequently vacated by trial court but reversed on appeal, see 330 F.3d 1214 (9th Cir. 2003))	Property Damage	Insured sought coverage for property damage resulting from construction defects.	Single occurrence	Where all damage occurs over multiple covered policy periods, only a single occurrence limit is payable if all damage is attributable to a single occurrence.
California	Southern Pac. Rail Corp. v. Certain Underwriters at Lloyd's, London, 2000 WL 35610804 (Cal. Ct. App. 2000) (unpublished)	Environ. PD	Insured sought coverage for pollution damages at numerous sites.	Multiple occurrences	No single policy or practice was shown by the insured that would have the effect of converting the myriad forms of pollution found at 63 separate sites into a lesser number of occurrences and hence there is at least one occurrence per site.
Connecticut	Metropolitan Life Ins. Co. v. Aetna Cas. & Sur. Co., 765 A.2d 891 (Conn. 2001)	Asbestos BI	Insured sought coverage for numerous asbestos bodily injury claims.	Multiple occurrences	A course of conduct spanning many decades is not a single occurrence.
Connecticut	United Technologies Corp. v. American Home Assurance Co., No. 2:92CV267 (D. Conn. Feb. 11, 1999), 13 Mealey's Ins. Litig. Rep. No. 17, reprinted in Section B (Mar. 2, 1999)	Environ. PD	Insured sought coverage for pollution damage at an owned site.	Multiple occurrences	The jury finding showed loss or damage to covered property in seven areas at the site.
Connecticut	Union Carbide Corp. v. Travelers Indem. Co., 399 F. Supp. 12 (W.D. Pa. 1975)	Product Liability	Insured sold defective chemical to a manufacturer that produced resins sold to customers for incorporation into different products and resulting in widespread claims.	Single occurrence	Defective chemical was the cause of all claims.

Drywall Analogies:
How many occurrences?

State / Province	Citation	Type of Case	Facts	Finding	Comments
District of Columbia	American Red Cross v. Travelers Indem. Co. of R.I., 816 F. Supp. 755 (D.D.C. 1993)	Bodily Injury	Insured sought coverage for numerous HIV-contaminated blood claims.	Multiple occurrences	The insured did not engage in a single negligent practice that could be considered one cause; instead, each act of distribution of contaminated blood constitutes an occurrence for purposes of applying the per occurrence limit.
Florida	Koikos v. Travelers Ins. Co., 849 So. 2d 263 (Fla. 2003)	Bodily Injury	Insured sought coverage for claims asserted by two victims of shooting in restaurant lobby.	Multiple occurrences	Where the insured is sued for negligent failure to provide security, "occurrence" is defined by the immediate injury producing act (gunshots) and not by the underlying tortious omission (failure to provide security).
Florida	Southern Int'l Corp. v. Poly-Urethane Indus., Inc., 353 So. 2d 646 (Fla. Dist. Ct. App. 1977)	Negligence PD	Contractor negligently applied sealant to roofs of several buildings pursuant to a single contract.	Single occurrence	Court apparently based its ruling on existence of a single contract governing the application of the sealant to several roofs of single condominium complex.
Illinois	Addison Ins. Co. v. Fay, 2009 WL 153859 (Ill. 2009)	Bodily Injury	Insured sought coverage for liability for the death of two boys who died in a pit as a result of the insured's negligent maintenance of its property.	Multiple Occurrences	Where negligence is the result of an ongoing omission rather than separate affirmative acts, a time and space test effectively limits what would otherwise potentially be a limitless bundling of injuries into a single occurrence.
Illinois	Nicor, Inc. v. Associated Elec. & Gas Ins. Servs., Ltd., 860 N.E.2d 280 (Ill. 2006)	Environ. PD	Insured sought coverage for property damage resulting from numerous mercury spills that occurred during the removal of mercury-containing regulators from customers' residences.	Multiple occurrences	Nicor incurred liability each time mercury was spilled from a regulator and, rather than attributing the cause of the damage to a system-wide failure by Nicor to remove the regulators safely, the court found that the spills in an isolated number of cases occurred as a result of an individual serviceman's actions or the particular circumstances in each residence.
Illinois	United States Gypsum Co. v. Admiral Ins. Co., 643 N.E.2d 1226 (Ill. App. Ct. 1994)	Asbestos PD	Insured sought coverage for asbestos building claims.	Single occurrence	The cause of all of the claims is the continuing process of the manufacture and sale of asbestos-containing products.

Drywall Analogies:
How many occurrences?

State / Province	Citation	Type of Case	Facts	Finding	Comments
Illinois	Mason v. Home Ins. Co. of Ill., 532 N.E.2d 526 (Ill. App. Ct. 1988)	Bodily Injury	Numerous claimants filed suit against the insured restaurant for alleged food poisoning.	Multiple occurrences	Each instance in which a customer was served tainted food over a three-day period created additional exposure to liability and constituted a separate occurrence.
Indiana	Marley-Wylain Co. v. Affiliated FM Ins. Co., No. 46C01-0202 (Ind. Cir. Ct. 2003), reprinted in 18 Mealey's Ins. Litig. Rep. No. 9, Section F (Jan. 7, 2004)	Asbestos BI	Insured sought coverage for numerous bodily injury claims.	Multiple occurrences	Each exposure to asbestos constitutes an event, resulting in multiple occurrences.
Kansas	American Fam. Mut. Ins. Co. v. Wilkins, 179 P.3d 1104 (Kan. 2008)	Bodily Injury	Automobile driver's negligence resulted in three collisions with multiple vehicles over a two minute period separated by one-half minute.	Multiple occurrences	The number of occurrences is based on the time-space continuum between the collisions and the insured driver's level of control over the vehicle. Multiple collisions constitute one occurrence when the collisions are nearly simultaneous or separated by a very short period of time and the insured does not maintain or regain control over the vehicle between collisions. When the collisions are separated by a period of time or the insured maintains or regains control of the vehicle before a subsequent collision, there are multiple occurrences.
Kansas	Atchison Topeka & Santa Fe Ry. v. Stonewall Ins. Co., 71 P.3d 1097 (Kan. 2003)	Hearing Loss BI	Insured sought coverage for numerous noise induced hearing loss claims.	Single occurrence	The failure of the insured to protect its employees from noise is the single occurrence.
Louisiana	**North Am. Specialty Ins. Co. v. Iberville Coating, Inc., No. 99-8509 (M.D. La. Oct. 3, 2001), reprinted in 15 Mealey's Ins. Litig. Rep. No. 46, Section D (Oct. 9, 2001)**	**Environ. BI**	**Insured sought coverage for numerous bodily injury claims arising from the release of mustard gas.**	**Single occurrence**	**The single occurrence was the release of mustard gas caused by hydroblasting of fin-fan tubes at plant.**

Drywall Analogies:
How many occurrences?

State / Province	Citation	Type of Case	Facts	Finding	Comments
Louisiana	**Exxon Corp. v. St. Paul Fire & Marine Ins. Co., 129 F.3d 781 (5th Cir. 1997)**	**Environ. BI**	**Insured sought coverage for bodily injury claims arising from several individuals' exposure to and inhalation of toxic fumes.**	**Multiple occurrences**	**Injuries to each claimant constitute a separate occurrence.**
Maine	Honeycomb Sys., Inc. v. Admiral Ins. Co., 567 F. Supp. 1400 (D. Me. 1983)	Product Liability	Insured manufactured a dryer which had problems with welds in 1975 and which sustained cracks in 1977.	Multiple occurrences	Court found that each of these defects was caused by different factors. The weld problem was caused by faulty welding while the crack was caused by a design error.
Maryland	Maryland Cas. Co. v. Hanson, 902 A.2d 152 (Md. Ct. Spec. App. 2006)	Lead BI	Insured sought coverage under multiple successive policies for lead poisoning sustained by several children in an apartment.	Multiple occurrences	Each elevated level indicates a bodily injury, which would then constitute an occurrence under each policy that corresponds to the injury for each child.
Maryland	Commercial Union Ins. Co. v. Porter Hayden Co., 698 A.2d 1167 (Md. Ct. Spec. App. 1997)	Asbestos BI	Insured sought coverage for numerous asbestos bodily injury claims.	Multiple occurrences	Each claimant's exposure to asbestos products is a separate occurrence.
Maryland	CSX Transp., Inc. v. Continental Ins. Co., 680 A.2d 1082 (Md. 1996)	Bodily Injury	Insured sought coverage for numerous noise-induced hearing loss claims.	Multiple occurrences	It is not enough that the cause of each claim is generally the same; to be considered as having arisen out of one occurrence, the exposure of each claimant must have some commonality with the exposure of the other claimants (i.e., each exposure must have occurred at the same place or been caused by the same source).
Massachusetts	**Colonial Gas Co. v. Aetna Cas. & Sur. Co., 823 F. Supp. 975 (D. Mass. 1993)**	**Urea Formaldehyde PD**	**Insured sought coverage for the costs of removing urea formaldehyde insulation from homes.**	**Single occurrence**	**The insured's use of urea formaldehyde foam insulation in its insulation program is the single occurrence that caused all property damage.**

Drywall Analogies:
How many occurrences?

State / Province	Citation	Type of Case	Facts	Finding	Comments
Michigan	Associated Indem. Corp. v. Dow Chem. Co., 814 F. Supp. 613 (E.D. Mich. 1993)	Property Damage	Insured sought coverage for claims arising out of the sale of defective gas pipe resin used for the extrusion of pipe.	Single occurrence	The production of defective resin was the sole, proximate, uninterrupted and continuing cause of all of the property damage.
Michigan	**Dow Chem. Co. v. Associated Indem. Corp., 727 F. Supp. 1524 (E.D. Mich. 1989)**	**Product Liability PD**	**Dow was sued in numerous cases alleging property damage to buildings.**	**Multiple occurrences**	**Each building in a claim or suit is a separate occurrence within the meaning of each policy at issue.**
Minnesota	Domtar, Inc. v. Niagara Fire Ins. Co., 2004 WL 376951 (Minn. Ct. App. 2004)	Environ. PD	Insured sought coverage for pollution at six sites in Canada which operated at different times at six different locations.	Multiple occurrences	The insured's claim that the varied activities at its geographically and geologically distinct sites are one occurrence, merely because wood processing activities are carried on at those sites and they are operated by related corporate entities, is rejected.
Minnesota	Diocese of Winona v. Interstate Fire & Cas. Co., 841 F. Supp. 894 (D. Minn. 1992)	Bodily Injury	Insured sought coverage for numerous sexual molestation claims.	Single occurrence	The underlying claims arise out of negligent supervision that constitutes only one occurrence per policy period.
Minnesota	Cargill, Inc. v. Liberty Mut. Ins. Co., 488 F. Supp. 49 (D. Minn. 1979), aff'd, 621 F.2d 275 (8th Cir. 1980)	Product Liability	Multiple sales of contaminated nutrient medium used by the pharmaceutical industry were made to a single buyer.	Single occurrence	Court found that the single occurrence was the change in manufacturing process that resulted in the contamination of all batches of nutrient medium.
Nevada	Washoe County v. Transcontinental Ins. Co., 878 P.2d 306 (Nev. 1994)	Bodily Injury	Insured sought coverage for numerous sexual molestation claims at a county-licensed day-care center.	Single occurrence	The County’s negligence in the licensing process and in its attendant duties to investigate and monitor the day-care center constitutes a single occurrence.
New Jersey	Ciba-Geigy Corp. v. Liberty Mut. Ins. Co., No. L 87515-87 (N.J. Super. Ct. App. Div. Jan. 28, 1998), reprinted in 12 Mealey's Litig. Rep. No. 13, Section B (Feb. 3, 1998)	Environ. PD	Insured sought coverage for pollution arising out of the operation of its chemical manufacturing plant.	Single occurrence	Even though the insured disposed of waste at various locations on the site, there is one occurrence where all of the waste resulted from the continuous manufacturing processes at the plant.

Drywall Analogies:
How many occurrences?

State / Province	Citation	Type of Case	Facts	Finding	Comments
New Jersey	Owens-Illinois, Inc. v. United Ins. Co., 625 A.2d 1 (N.J. Super. Ct. App. Div. 1993), aff'd in part and rev'd on other grounds, 650 A.2d 974 (N.J. 1994)	Asbestos BI & PD	Insured sought coverage for asbestos bodily injury and asbestos building claims.	Single occurrence	In order to preserve the insured's reasonable expectations, the manufacture and sale of asbestos products must be regarded as the single occurrence triggering liability for asbestos claims.
New Jersey	Doria v. Insurance Co. of N. Am., 509 A.2d 220 (N.J. Super. Ct. App. Div. 1986)	Bodily Injury	Two children were injured when one child went to the aid of another in an abandoned swimming pool on the insured's property.	Single occurrence	Both injuries arose at approximately the same time and resulted from a single cause -- the insured's failure to properly fence in and cover the abandoned pool.
New York	Appalachian Ins. Co. v. General Elec. Co., 863 N.E.2d 994 (N.Y. App. Div. 2007)	Asbestos BI	Insured sought coverage for numerous asbestos bodily injury claims.	Multiple occurrences	The operative occurrence is the last link in the causal chain leading to liability; i.e., the exposure of each individual claimant to asbestos contained in turbines manufactured by the insured.
New York	Travelers Cas. & Sur. Co. v. Certain Underwriters at Lloyd's of London 760 N.E.2d 319 (N.Y. 2001)	Environ. PD	Reinsured sought to treat pollution-related losses at multiple sites as a single loss for reinsurance purposes.	Multiple occurrences	Plaintiff's settlement with the policyholder encompassed numerous distinct claims arising from unrelated polluting activities and damages in the United States that were not linked by a common origin.
New York	National Union Fire Ins. Co. v. Stroh Cos., 2000 WL 264320 (S.D.N.Y. 2000), aff'd, 265 F.3d 97 (2d Cir. 2001)	Property damage	Insured sought coverage for damages arising out of a product recall involving glass contamination in beverage products.	Single occurrence	Where a single defect in the design of a production line affected a steady stream of production, there is a single proximate uninterrupted and continuous cause.
New York	In re Prudential Lines, Inc., 158 F.3d 65 (2d Cir. 1998)	Asbestos BI	Insured sought coverage for asbestos bodily injury claims.	Multiple occurrences	Each claimant's asbestos-related injuries arose from a separate occurrence.
New York	Consolidated Edison Co. of N.Y., Inc. v. Employers Ins. of Wausau, 1997 WL 727486 (S.D.N.Y. 1997)	Environ. PD	Insured sought coverage for costs associated with the cleanup of pollution spills at two sites.	Multiple occurrences	Pollution at two different sites did not arise from substantially the same general conditions but rather from the separate spilling of PCBs at each site.

Drywall Analogies:
How many occurrences?

State / Province	Citation	Type of Case	Facts	Finding	Comments
New York	Stonewall Ins. Co. v. Asbestos Claims Mgmt. Corp., 73 F.3d 1178 (2d Cir. 1995), modified, 85 F.3d 49 (1996)	Asbestos PD	Insured sought coverage for asbestos building claims.	Multiple occurrences	Each installation created an exposure to a condition that resulted in property damage; for each installation there was a new exposure and a separate occurrence.
Ohio	Babcock & Wilcox Co. v. Arkwright-Boston Mfg. Mut. Ins. Co., 53 F.3d 762 (6th Cir. 1995), cert. denied, 516 U.S. 1140 (1996)	Asbestos BI	Insured sought coverage for asbestos bodily injury claims.	Multiple occurrences	Each person's exposure to asbestos is a separate occurrence or event.
Ohio	Morton Thiokol, Inc. v. Aetna Cas. & Sur. Co., No. A-8603799 (Ohio Com. Pleas Ct. 1988)	Asbestos BI	Insured sought coverage for asbestos bodily injury claims.	Single occurrence	The corporate decision to manufacture and distribute asbestos-containing products constitutes a single occurrence.
Ohio	Owens-Illinois, Inc. v. Aetna Cas. & Sur. Co., 597 F. Supp. 1515 (D.D.C. 1984)	Asbestos BI	Aetna insured Owens-Illinois subject to a $250,000 per occurrence deductible.	Single occurrence	The court held that the manufacture and sale of asbestos products must be regarded as the single occurrence triggering liability for asbestos injury, since any other result would effectively deny the insured any coverage.
Oklahoma	Business Interiors, Inc. v. Aetna Cas. & Sur. Co., 751 F.2d 361 (10th Cir. 1984)	Property Damage	Insured sought coverage for damage resulting from embezzlement by an employee who wrote 40 unauthorized checks.	Single occurrence	The cause of the insured's loss was the continued dishonesty of a single employee.
Pennsylvania	Donegal Mut. Ins. Co. v. Baumhammers, 938 A.2d 286 (Pa. 2007)	Bodily Injury	Insured sought coverage for claim of negligent supervision of son who shot and killed five individuals in a two-hour period.	Single occurrence	The cause approach applies to the issue of number of occurrences, and the parents' alleged single act of negligence constitutes one accident and one occurrence.

Drywall Analogies:
How many occurrences?

State / Province	Citation	Type of Case	Facts	Finding	Comments
Pennsylvania	Sunoco, Inc. v. Illinois Nat'l Ins. Co., 2005 WL 2077258 (E.D. Pa. 2005), rev'd, 2007 WL 295267 (3d Cir. 2007) (reversal limited to permit district court to consider fact issue related to one of 77 underlying claims)	Environ. PD	Insured sought coverage for numerous MBTE claims.	Single occurrence	Where one negligent act is the sole proximate cause there is but one "accident" even though there are several resulting injuries or losses to various claimants.
Pennsylvania	Kvaerner U.S. Inc. v. One Beacon Ins. Co., 2005 WL 2001117 (Pa. Ct. Com. Pl. 2005)	Asbestos BI	Insured sought coverage for numerous asbestos bodily injury claims.	Multiple occurrences	Claims arising at each site should be considered a separate occurrence since the exposure to asbestos arose from the construction of furnaces at different sites, at different times, and for varying lengths of time.
Pennsylvania	Liberty Mut. Ins. Co. v. Treesdale Inc., 418 F.3d 330 (3d Cir. 2005)	Asbestos BI	Insured sought coverage for numerous asbestos bodily injury claims.	Single occurrence	All of the injuries stem from a common source -- the manufacture and sale of asbestos-containing products.
Pennsylvania	Air Prods. & Chems., Inc. v. Hartford Accident & Indem. Co., 707 F. Supp. 762 (E.D. Pa. 1989), aff'd in part and vacated in part on other grounds, 25 F.3d 177 (3d Cir. 1994)	Product BI	Multiple bodily injury claims resulting from exposure to welding fumes and asbestos products.	Multiple occurrences	The claims in the underlying asbestos and welding litigation constitute two separate occurrences: one for all asbestos-related claims, one for all welding products claims.
Puerto Rico	In re San Juan Dupont Plaza Hotel Fire Litig., MDL-721 (D.P.R. 1989)	Negligence BI	Multiple BI claims were filed against the insured arising out of a fire.	Multiple occurrences	An occurrence arises out of each and every discrete negligent act or omission attributable to the insured, which causes damages to the claimants.
Rhode Island	Lee v. Interstate Fire & Cas. Co., 86 F.3d 101 (7th Cir. 1996)	Sexual molestation	Insured sought coverage for the sexual abuse of one person during two policy years in two distinct places.	Multiple occurrences	Where the tort is negligent supervision, each act of sexual abuse can be a separate occurrence.

Drywall Analogies:
How many occurrences?

State / Province	Citation	Type of Case	Facts	Finding	Comments
Rhode Island	Bartholomew v. Insurance Co. of N. Am., 502 F. Supp. 246 (D.R.I. 1980), aff'd, 655 F.2d 27 (1st Cir. 1981)	Product Liability	Numerous defects developed in various components of a car-wash unit causing damage to various automobiles during the policy period.	Single occurrence	Court held that the cause of the defects was a single event -- the sale of the defective car-wash unit.
South Carolina	Owners Ins. Co. v. Salmonsen, 622 S.E.2d 525 (S.C. 2005)	Product Liability	Insured sought coverage for numerous claims involving property damage arising out of defective stucco.	Single occurrence	Because the distributor engaged in no distinct action giving rise to liability for each sale, under the policy definition, placing a defective product into the stream of commerce is one occurrence.
Texas	U.E. Texas One-Barrington, Ltd. v. General Star Indem. Co., 332 F.3d 274 (5th Cir. 2003)	Property Damage	Insured sought coverage for property damage caused by water leaking from a plumbing system.	Multiple occurrences	The separate leaks in each building are separate occurrences.
Texas	Fina, Inc. v. Travelers Indem. Co., 184 F. Supp. 2d 547 (N.D. Tex. 2002)	Asbestos BI	Insured sought coverage for multiple asbestos bodily injury claims.	Multiple occurrences	Court finds that there were at least three occurrences (at least one at each of three Fina facilities), and that evidence of each claimant's exposure to asbestos is needed to determine the precise number of occurrences.
Texas	Preferred Risk Mut. Ins. Co. v. Watson, 937 S.W.2d 148 (Tex. Ct. App. 1997)	Bodily Injury	Insured sought coverage for claims involving the sexual molestation of three children by a single employee.	Single occurrence	The single occurrence is all acts of sexual molestation by one person.
Texas	Stonewall Ins. Co. v. Asbestos Claims Mgmt. Corp., 73 F.3d 1178 (2d Cir. 1995), modified, 85 F.3d 49 (1996)	Asbestos PD	Insured sought coverage for asbestos building claims.	Multiple occurrences	Each installation created an exposure to a condition that resulted in property damage; for each installation there was a new exposure and a separate occurrence.
Virginia	Norfolk & W. Ry. v. Accident & Cas. Ins. Co. of Winterthur, 796 F. Supp. 929 (W.D. Va. 1992), appeal dismissed in part & aff'd in part, 41 F.3d 928 (4th Cir. 1994)	Hearing Loss BI	Insured sought coverage for FELA hearing loss claims filed against it by former employees.	Multiple occurrences	Many different sounds damaged the hearing of many employees in many places over the course of many years.

Drywall Analogies:
How many occurrences?

State / Province	Citation	Type of Case	Facts	Finding	Comments
Washington	City of Seattle v. Certain Underwriters at Lloyd's, London, No. 97-2-15939 (Wash. Super. Ct. Jan. 28, 1998), reprinted in 12 Mealey's Ins. Litig. Rep. No. 19, Section C (Mar. 17, 1998)	Environ. PD	Insured sought coverage for pollution damage at several sites.	Multiple occurrences	The separate property damage at each site is a separate occurrence.
Washington	Aluminum Co. of Am. v. Accident & Cas. Ins. Co., No. 92-2-28065-5 (Wash. Super. Mar. 3, 1997), reprinted in 11 Mealey's Ins. Litig. Rep. No. 18, Section A (Mar. 11, 1997)	Environ. PD	Insured sought coverage for pollution at various manufacturing facilities.	Multiple occurrences	There are two occurrences at each site: the first encompasses the remediation area proximate to the manufacturing processes that have been contaminated by various spills, leaks, drips and releases from those systems; and the second involves areas of on-site disposal and release of waste that have failed to contain or neutralize the pollutants placed there.
Washington	Skinner Corp. v. Fireman's Fund Ins. Co., 1996 WL 376657 (W.D. Wash. 1996)	Asbestos BI	Insured sought coverage for asbestos bodily injury claims under a marine insurance policy.	Single occurrence	All injuries arising from a common cause constitute a single accident or occurrence.
West Virginia	Monongahela Power Co. v. Continental Cas. Co., No. 1:92CV77 (N.D. W. Va. Mar. 27, 1996), reprinted in 11 Mealey's Ins. Litig. Rep. No. 6, Section C (Dec. 10, 1996)	Environ. BI	Insured sought coverage for personal injuries resulting from exposure to toxic vapors, particularly mercury.	Single occurrence	Where the exposure and injuries occurred over several weeks, and there was no intervening event, there is only a single occurrence.
Wisconsin	Plastics Eng'g Co. v. Liberty Mut. Ins. Co., 759 N.W.2d 613 (Wis. 2009)	Asbestos BI	Insured sought coverage for numerous asbestos bodily injury claims.	Multiple Occurrences	Each individual claimant's repeated and continuous exposure to asbestos-containing products constitutes an occurrence.

Drywall Analogies:
Absolute Pollution Exclusion

State / Province	Citation	Type of Case	Facts	Finding	Comments
Arizona	Keggi v. Northbrook Prop. & Cas. Ins. Co., 13 P.3d 785 (Az. Ct. App. 2000)	Bodily Injury	Water distribution system sought coverage for bodily injuries sustained by customer who drank water contaminated with bacteria from an unknown source.	Exclusion not applied	The plain language of the exclusion does not include fecal coliform bacteria within the definition of "pollutants." The exclusion is intended to preclude coverage for clean-up operations ordered under RCRA, CERCLA, and other federal or state environmental laws and thus applies to traditional "environmental pollution" situations and substances.
Arkansas	Minerva Enters., Inc. v. Bituminous Cas. Corp., 851 S.W.2d 403 (Ark. 1993)	Environ. PD	Insured sought coverage for claim arising out of the backup of solid and liquid sewage caused by improper maintenance of a septic system.	Exclusion not applied	The exclusion was only intended to apply to waste from industrial polluters and was never intended to cover those who are not active polluters but merely caused isolated damage by something that could otherwise be classified as a "contaminant" or "waste."
California	Johnson v. Clarendon Ins. Co., 2009 WL 252619 (Cal. Ct. App 2009) (unpublished)	Negligence PD	Landlord negligently maintained roof and walls of condominium unit, and overwatered the yard around the structure, resulting in mold growth in and around home.	Exclusion not applied	Neither the dispersal of clean water nor the negligent building maintenance resulting in an isolated incident of mold growth qualifies as the escape or introduction of a conventional environmental pollutant.
California	MacKinnon v. Truck Ins. Exch., 73 P.3d 1205 (Cal. 2003)	Environ. BI	Insured sought coverage for bodily injury resulting from the spraying of an apartment building with insecticide to exterminate yellow jackets.	Exclusion not applied	The scope of the exclusion is limited to injuries arising from events commonly thought of as pollution; i.e., environmental pollution.
California	Charles E. Thomas Co. v. Transamerica Ins. Group, 72 Cal. Rptr. 2d 577 (Cal. Ct. App. 1998)	Environ. PD	Insured sought coverage for pollution damage resulting from the leakage of diesel fuel from a punctured tank.	Exclusion not applied	Where the pollution exclusion only applies to losses arising out of a request or demand that the insured clean up pollution, it does not apply to losses relating to the removal and replacement of storage tanks or the excavation and disposal of contaminated soil.

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California	East Quincy Servs. Dist. v. Continental Ins. Co., 864 F. Supp. 976 (E.D. Cal. 1994)	Environ. PD	Insured sought coverage for contamination caused by E. coli and other bacteria.	Exclusion applied	Where the exclusion specifically applies to biological materials and waste, it applies to the seepage of bacteria into soil.
Colorado	**TerraMatrix, Inc. v. United States Fire Ins. Co., 939 P.2d 483 (Colo. Ct. App. 1997)**	**Environ. BI**	**Insured sought coverage for claims arising out of the release of ammonia gas into office space.**	**Exclusion applied**	**The exclusion is unambiguous when applied to ammonia vapors. Ammonia is a pollutant, and the movement of ammonia vapors within the office building air duct or ventilation system constitutes a discharge or dispersal.**
Colorado	Blackhawk-Central City Sanitation Dist. v. American Guarantee & Liab. Ins. Co., 856 F. Supp. 584 (D. Colo. 1994), rev'd on other grounds, 214 F.3d 1183 (10th Cir. 2000)	Environ. PD	Insured sought coverage for pollution arising from discharges from a sewage treatment facility.	Exclusion applied	The exclusion is unambiguous and precludes all pollution damage; it applies here because the effluents discharged by the insured constitute pollutants.
Connecticut	Danbury Ins. Co. v. Novella, 727 A.2d 279 (Conn. Super. Ct. 1998)	Environ. BI	Insured sought coverage for personal injury claims arising from alleged exposure to toxic levels of lead based paint.	Exclusion not applied	The exclusion is ambiguous as applied to whether toxic levels of lead paint on the interior and exterior surfaces of a residence involve the discharge of a pollutant.
District of Columbia	**National Elec. Mfrs. Ass'n v. Gulf Underwriters Ins. Co., 162 F.3d 821 (4th Cir. 1998)**	**Environ. BI**	**Insured sought coverage for numerous bodily injury claims resulting from exposure to welding rod fumes.**	**Exclusion applied**	**The pollution exclusion unambiguously bars coverage for welding rod claims.**
Florida	Philadelphia Indem. Ins. Co., 595 F. Supp. 2d 1319 (S.D. Fla. 2009)	Negligence BI	Worker pressure cleaning parking garage injured after exposure to feces, raw sewage, and battery acid that owner had allowed to accumulate on premises.	Exclusion applied	The pollution exclusion unambiguously applies to battery acid, raw sewage, and feces.

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Florida	James River Ins. Co. v. Ground Down Eng'g Inc., 2007 WL 1730102 (M.D. Fla. 2007)	Environ. PD	Insured contractor was sued for allegedly failing to properly perform a Phase I environmental site assessment on real property.	Exclusion not applied	It would be unconscionable at best to interpret a professional liability policy as covering anything of substance if the court were to construe the pollution exclusion to limit the insurer's liability related to any form of pollution, regardless of causation, resulting from the insured's wrongful act.
Florida	**Dantzler Lumber & Export Co. v. Liberty Mut. Ins. Co., No. 99-7393 (S.D. Fla. Feb. 26, 2001), reprinted in 15 Mealey's Ins. Litig. Rep. No. 34, Section D (July 10, 2001)**	**Environ. PD**	**Insured sought coverage for damages caused by airborne particles from the manufacturer of grout that damaged roof tiles.**	**Exclusion applied**	**The pollution exclusion applies to discharges that result from the proper, everyday use of otherwise benign products and materials, and the airborne emissions which adhered to and stained the roof tiles were pollutants.**
Florida	Technical Coating Applicators, Inc. v. United States Fid. & Guar. Co., 157 F.3d 843 (11th Cir. 1998)	Environ. BI	Insured sought coverage for bodily injury claims arising out of vapors emitted by roof coatings it applied to a school building.	Exclusion applied	The exclusion is unambiguous and bars coverage regardless of whether the insured used the roof coating product properly or negligently.
Georgia	Auto-Owners Ins. Co. v. Reed, 667 S.E.2d 90 (Ga. 2008)	Bodily Injury	Tenant sued landlord for carbon monoxide poisoning allegedly caused by landlord's failure to keep rental house in good repair.	Exclusion applied	The plain language of the exclusion excludes this claim from coverage.
Georgia	**Bituminous Cas. Corp. v. Advance Adhesive Tech., Inc., 73 F.3d 335 (11th Cir. 1996)**	**Environ. BI**	**Insured sought coverage for claim alleging bodily injury from the inhalation of toxic fumes.**	**Exclusion not applied**	**This case involves an emission and not a discharge or release of pollutants; the exclusion does not apply to a consumer's claim for damages arising out of the intended use of the product.**
Hawaii	Apana v. TIG Ins. Co., 504 F. Supp. 2d 998 (D. Haw. 2007)	Environ. BI	Insured sought coverage for bodily injury resulting from inhalation of noxious fumes from a drain cleaner.	Exclusion applied	The noxious fumes are a pollutant and are excluded under a plain, common and ordinary understanding of the total pollution exclusion.

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Hawaii	**Allen v. Scottsdale Ins. Co., 307 F. Supp. 2d 1170 (D. Haw. 2004)**	**Environ. BI & PD**	**Insured sought coverage for bodily injury claims arising out of the release of dust particles from a concrete recycling plant.**	**Exclusion applied**	**The fugitive dust from the plant is a pollutant, and the injuries and damages arise out of the release of pollutants and are barred by the pollution exclusion.**
Idaho	Monarch Greenback, LLC v. Monticello Ins. Co., 118 F. Supp. 2d 1068 (D. Idaho 1999)	Environ. PD	Insured sought coverage for EPA administrative action seeking cleanup of mine tailings on third-party property.	Exclusion applied	Mine tailings are pollutants, and the exclusion applies to all damage caused by the release of pollutants.
Illinois	**American States Ins. Co. v. Koloms, 687 N.E.2d 72 (Ill. 1997)**	**Environ. BI**	**Insured sought coverage for bodily injury claims arising out of the accidental release of carbon monoxide from a broken furnace.**	**Exclusion not applied**	**Given the historical background of the absolute pollution exclusion and the drafters' continued use of environmental terms of art, the exclusion applies only to those injuries caused by traditional environmental pollution.**
Illinois	Outboard Marine Corp. v. Liberty Mut. Ins. Co., 607 N.E.2d 1204 (Ill. 1992)	Environ. PD	The insured actively discharged pollutants from its plant site over an extended period of time.	Exclusion applied	An exclusion which barred coverage for pollution damage caused by an occurrence was unambiguous and applied to property damage resulting from continuous or repeated exposure to pollutants.
Indiana	Employers Mut. Cas. Co. v. DFX Enters., Inc., No. 20D03-9505 (Ind. Super. Ct. Apr. 24, 1997), reprinted in 11 Mealey's Ins. Litig. Rep. No. 36, Section G (July 22, 1997)	Environ. BI	Insured sought coverage for claims against mobile home park owner alleging bodily injury resulting from bacteriological and virological agents and diseases in its water supply.	Exclusion applied	Fecal coliform and other bacteria in sewage is a pollutant since the definition of pollutant includes sewage and all of its component parts.
Indiana	**American States Ins. Co. v. Kiger, 662 N.E.2d 945 (Ind. 1996)**	**Environ. PD**	**Insured sought coverage for pollution arising out of the release of gasoline from an underground storage tank.**	**Exclusion not applied**	**The exclusion is ambiguous; if the garage policy was intended to exclude coverage for damage caused by the leakage of gasoline, the language of the policy must be explicit.**

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Iowa	**Bituminous Cas. Corp. v. Sand Livestock Sys., Inc., 728 N.W.2d 216 (Iowa 2007)**	**Bodily injury**	**Insured sought coverage for death caused by carbon monoxide emitted from propane power washer in restroom.**	**Exclusion applied**	**The exclusion is not limited to "traditional environmental pollution." The plain language in the exclusion encompasses the injury at issue here because carbon monoxide is a gaseous irritant or contaminant, which was released from the propane power washer.**
Iowa	Iowa Comprehensive Petroleum UST Fund Bd. v. Federated Mut. Ins. Co., 596 N.W.2d 546 (Iowa 1999)	Environ. PD	Insured sought coverage for pollution resulting from numerous spills of petroleum from underground storage tanks.	Exclusion applied	Where pollution incidents that occurred prior to the retroactive date of the policy contributed to the environmental damage, the exclusion applies to bar coverage.
Kansas	Atlantic Ave. Assocs. v. Central Solutions, Inc., 24 P.3d 188 (Kan. Ct. App. 2001)	Environ. PD	Insured sought coverage for damages resulting from a leak of liquid cement cleaner.	Exclusion applied	The exclusion is unambiguous and does not make any exception for pollutants that are finished consumer products stored on leased premises.
Kansas	Associated Wholesale Grocers, Inc. v. Americold Corp., 934 P.2d 65 (Kan. 1997)	Environ. PD	Insured sought coverage for claims arising out of smoke damage from a hostile fire.	Exclusion not applied	The exclusion is ambiguous when applied to these facts and should be interpreted to include coverage for damage caused by smoke from a hostile fire.
Kentucky	**Motorists Mut. Ins. Co. v. RSJ, Inc., 926 S.W.2d 679 (Ky. Ct. App. 1996)**	**Environ. BI**	**Insured sought coverage for bodily injury claims arising out of the release of carbon dioxide from a leak in a vent stack of a boiler.**	**Exclusion not applied**	**An ordinary business person would not expect the exclusion to preclude coverage for these injuries incurred through an unexpected leak in a vent pipe.**
Louisiana	Grefer v. Travelers Ins. Co., 919 So. 2d 758 (La. Ct. App. 2005)	Environ. PD	Claimant sought coverage for pollution damage to an industrial site operated by the insured.	Exclusion applied	The exclusion bars coverage where the discharge of waste materials was expected and intended and where the property damage arises out of this discharge.

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Louisiana	**Doerr v. Mobile Oil Corp., 774 So. 2d 119 (La. 2000), opinion corrected, 782 So. 2d 573 (La. 2001)**	**Environ. BI**	**Insured sought coverage for bodily injuries resulting from discharge of hydrocarbons into river that were subsequently drawn into water system and distributed to consumers.**	**Exclusion not applied**	**The exclusion was designed to exclude coverage for environmental pollution only and not for all interactions with irritants or contaminants of any kind.**
Maine	Clark's Cars & Parts, Inc. v. Monticello Ins. Co., 2005 WL 2972988, aff'd, 2005 WL 3448003 (D. Me. 2005)	Environ. PD	Insured sought coverage for pollution caused by gasoline spilled on the ground in a junk yard in the course of car crushing operations.	Exclusion applied	The automobile junk yard is a waste site where gasoline, a pollutant, was released.
Maine	**Nautilus Ins. Co. v. Jabar, 188 F.3d 27 (1st Cir. 1999)**	**Environ. BI**	**Insured sought coverage for bodily injury resulting from the inhalation of hazardous fumes discharged by roofing products.**	**Exclusion not applied**	**The exclusion is ambiguous as applied to this claim because an ordinary insured could reasonably interpret the pollution exclusion as applying only to environmental pollution.**
Maine	Guilford Indus., Inc. v. Liberty Mut. Ins. Co., 688 F. Supp. 792 (D. Me. 1988), aff'd, 879 F.2d 853 (1st Cir. 1989)	Environ. PD	A river flood caused oil tank pipes to rupture.	Exclusion applied	Court held that the exclusion was broad and included oil as a contaminant.
Maryland	Clendenin Bros., Inc. v. United States Fire Ins. Co., 889 A.2d 387 (Md. 2005)	Environ. BI	Insured sought coverage for bodily injury claims arising out of exposure to localized welding fumes.	Exclusion not applied	The total pollution exclusion is ambiguous in the context of manganese welding fumes and does not apply when the insured's liability may be caused by non-environmental localized workplace fumes.
Maryland	Brantly Dev. Group, Inc. v. Harford Mut. Ins. Co., No. 13-C-99-42636 (Md. Cir. Ct. May 22, 2001), reprinted in 15 Mealey's Ins. Litig. Rep. No. 30, Section A (June 12, 2001)	Environ. PD	Insured sought coverage for damages arising out of a claim that they sold homes built on a former solid waste dump.	Exclusion not applied	There is a duty to defend to the extent the complaint contains allegations of damage resulting from negligence that is unrelated to the presence of a waste dump.

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Massachusetts	McGregor v. Allamerica Ins. Co., 868 N.E.2d 1225 (Mass. 2007)	Environ. PD	Insured sought pollution coverage for spill of home heating oil caused by negligence in the installation of a new furnace at a residential home.	Exclusion applied	Spilled oil is a classic example of pollution, and a reasonable insured would understand oil leaking into the ground to be a pollutant. The location of an oil spill at a residence, rather than an industrial site, does not alter the classification of spilled oil as a pollutant.
Massachusetts	Western Alliance Ins. Co. v. Gill, 686 N.E.2d 997 (Mass. 1997)	Environ. BI	Insured sought coverage for bodily injury claims arising out of exposure to carbon monoxide fumes.	Exclusion not applied	A reasonable policyholder would not reasonably characterize carbon monoxide emitted from a malfunctioning or improperly operated restaurant oven as pollution.
Massachusetts	Atlantic Mut. Ins. Co. v. McFadden, 595 N.E.2d 762 (Mass. 1992)	Environ. BI	Insured sought coverage for a claim for personal injury arising out of exposure to lead paint.	Exclusion not applied	Court found that lead in paint, putty or plaster is not a pollutant since it does not fall within the general or specific terms included as pollutants.
Michigan	Watson v. Travelers Indem. Co., 2005 WL 839504 (Mich. Ct. App. 2005)	Environ. BI	Insured sought coverage for bodily injury resulting from inhalation of fumes from diesel fuel and adhesive mixture that splashed through an open window from a drum that fell off a roof.	Exclusion applied	Even though this claim did not involve traditional environmental pollution, the exclusion is unambiguous and absolute and bars coverage for injury rising out of the release of pollutants.
Michigan	Carpet Workroom v. Auto Owners Ins. Co., 2002 WL 1747884 (Mich. Ct. App. 2002)	Environ. BI	Insured sought coverage for bodily injuries resulting from the inhalation of toxic fumes from a carpeting adhesive.	Exclusion applied	The exclusion is clear, unambiguous and not limited to traditional environmental pollution claims; it applies to claim involving the discharge of adhesive vapors or fumes.
Michigan	Meridian Mut. Ins. Co. v. Kellman, 197 F.3d 1178 (6th Cir. 1999)	Environ. BI	Insured sought coverage for claims of bodily injury arising out of the inhalation of chemical fumes.	Exclusion not applied	The absolute pollution exclusion does not bar coverage for injuries caused by toxic substances that are still confined within their general area of intended use.

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Michigan	Hydrodynamics, Inc. v. Auto-Owners Ins. Co., 1997 WL 33344492 (Mich. Ct. App. 1997)	Environ. PD	Insured sought coverage for pollution resulting from sewage backup which caused damage to claimants' basements.	Exclusion applied	Groundwater and rainwater, when mixed with effluent from sanitary sewers, is a pollutant.
Minnesota	Continental Cas. Co. v. Advance Terrazzo & Tile Co., 2005 WL 1923661 (D. Minn. 2005), aff'd, 462 F.3d 1002 (8th Cir. 2006)	Environ. BI	Insured sought coverage for bodily injury resulting from the release of carbon monoxide from propane-powered grinders used at a job site.	Exclusion applied	The absolute pollution exclusion is unambiguous and encompasses not only traditional environmental pollution, but also incidents arising out of ordinary business activities.
Minnesota	Schmid v. Fireman's Fund Ins. Co., 97 F. Supp. 2d 967 (D. Minn. 2000)	Environ. BI	Insured sought coverage for bodily injuries arising out of exposure to carbon monoxide.	Exclusion not applied	Where the carbon monoxide resulted from a hostile fire, the hostile fire exception applied and reinstated coverage.
Minnesota	Johnson v. Woodstock Homeowners' Ass'n II, 1999 WL 540724 (Minn. Ct. App. 1999)	Environ. BI	Insured sought coverage for bodily injury claims arising out of improperly vented sewer gas into a condominium unit.	Exclusion not applied	Although the bodily injuries arose out of the release of pollutants, the release of pollutants did not arise out of premises owned or occupied by the condominium association.
Minnesota	Horace Mann Ins. Co. v. Jackson, 1997 WL 537022 (Minn. Ct. App. 1997)	Lead BI	Insured sought coverage for bodily injury claims arising out of exposure to lead paint.	Exclusion not applied	The exclusion applies only to claims involving pollution of the natural environment and does not extend to claims involving injuries caused by ingestion of lead paint debris contaminating the interior of a home.
Mississippi	American States Ins. Co. v. Nethery, 79 F.3d 473 (5th Cir. 1996)	Environ. BI	Insured sought coverage for bodily injury arising out of exposure to paint and glue fumes.	Exclusion applied	The exclusion is unambiguous and applies to bar coverage arising out of the release of chemical pollutants.
Missouri	American W. Home Ins. Co. v. Utopia Acquisition L.P., 2009 WL 792483 (W.D. Mo. 2009)	Environ. BI	Insured sought coverage for alleged bodily injury resulting from exposure to mold and other airborne contaminants in an apartment.	Exclusion applied	The exclusion is not ambiguous and applies to injuries resulting from exposure to mold and other airborne contaminants.

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Missouri	Hocker Oil Co. v. Baker-Phillips-Jackson, Inc., 997 S.W.2d 510 (Mo. Ct. App. 1999)	Environ. PD	Insured sought coverage for pollution resulting from the release of gasoline from an underground storage tank.	Exclusion not applied	Gasoline is not a pollutant in the context of an insurance policy sold to a gas station since it would exclude the insured's major source of liability.
Missouri	Sargent Constr. Co. v. State Auto Ins. Co., 23 F.3d 1324 (8th Cir. 1994)	Environ. PD	Insured sought coverage for property damage arising out of the release of muriatic acid fumes.	Exclusion not applied	The definition of pollutant is ambiguous since a substance may be a contaminant because it in fact caused physical irritation or contamination, or because it has the capability of causing physical irritation or contamination, regardless of whether it in fact caused such injury or damage.
Nebraska	Cincinnati Ins. Co. v. Becker Warehouse, Inc., 635 N.W.2d 112 (Neb. 2001)	Environ. PD	Insured sought coverage for contamination to its food products from the release of xylene fumes from a sealant applied to a concrete floor.	Exclusion applied	The exclusion is unambiguous and is not limited to claims involving traditional environmental pollution.
New Hampshire	Titan Holdings Syndicate, Inc. v. City of Keene, N.H., 898 F.2d 265 (1st Cir. 1990)	Environ. PD	Insured was sued by homeowners seeking damages arising out of noxious fumes, loud noises and bright light emanating from sewage treatment plant.	Exclusion applied in part	While the claim alleging injury due to noxious odors was barred, the definition of pollutants did not extend to the excessive noise and light.
New Jersey	**Edwards & Caldwell LLC v. Gulf Ins. Co., 2005 WL 2090636 (D.N.J. 2005)**	**Asbestos PD**	**Client sued law firm based on firm's failure to disclose home inspection report that showed asbestos in home purchased by client.**	**Exclusion applied**	**Since asbestos is a pollutant, the exclusion applies.**
New Jersey	Nav-Its, Inc. v. Selective Ins. Co. of Am., 869 A.2d 929 (N.J. 2005)	Environ. BI	Insured sought coverage for injuries caused by the inhalation of floor sealant fumes in an office building.	Exclusion not applied	Exclusion is limited to traditional environmental pollution claims and, therefore, did not apply to fumes from a floor coating or sealant in a building.
New York	Belt Painting Corp. v. TIG Ins. Co., 795 N.E.2d 15 (N.Y. 2003)	Environ. BI	Insured sought coverage for bodily injury arising out of the inhalation of paint fumes in an office building.	Exclusion not applied	The exclusion is ambiguous and does not clearly and unambiguously exclude a personal injury claim arising from indoor exposure to the insured's tools of its trade.

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New York	Roofers Joint Training, Apprentice & Educ. Comm. of W. N.Y. v. General Accident Ins. Co. of Am., 713 N.Y.S.2d 615 (N.Y. App. Div. 2000)	Environ. BI	Insured sought coverage for bodily injuries resulting from exposure to toxic fumes during a construction safety course.	Exclusion not applied	An ordinary insured could reasonably conclude that the exclusion is only applicable to bodily injuries caused by traditional environmental pollution and not to bodily injuries arising from the use of a product for its intended purpose, especially where the fumes were confined to the area where the demonstration was conducted and were not "released" into the environment.
North Carolina	**Auto-Owners Ins. Co. v. Potter, 2004 WL 1662454 (4th Cir. 2004) (unpublished)**	**Environ. BI & PD**	**Insured utility company sought coverage for bodily injury and property damage resulting from its provision of contaminated well water to housing development.**	**Exclusion not applied**	**The exclusion does not apply to the distribution of an adulterated product and the insured's attendant negligence and breach of warranties.**
Ohio	Danis v. Great Am. Ins. Co., 823 N.E.2d 59 (Ohio Ct. App. 2004)	Environ. PD	Insured sought coverage for lawsuit seeking contribution for CERCLA response costs and damages for business torts arising out of the failure to pay for the cleanup of pollution.	Exclusion applied	The intent of the pollution exclusion is obvious, and that is to preclude coverage for nearly all pollution-related claims.
Oklahoma	Bituminous Cas. Corp. v. St. Clair Lime Co., 1995 WL 632292, 69 F.3d 547 (10th Cir. 1995) (unpublished)	Environ. BI	Insured sought coverage for injuries caused by the release of pollutants at a steel mill.	Exclusion applied	The exclusion is unambiguous and applies in this case to pollution claims arising out of the product hazard.
Oregon	Indiana Lumbermen's Mut. Ins. Co. v. West Oregon Wood Prods, Inc., No. 99-1013 (D. Ore. Mar. 1, 2000), reprinted in 14 Mealey's Ins. Litig. Rep. No. 19, Section E (Mar. 21, 2000), aff'd, 268 F.3d 639 (9th Cir. 2001)	Environ. PD	Insured sought coverage for pollution damage arising out of its operation of a wood products manufacturing facility.	Exclusion applied	Where the underlying complaint alleges that the insured intentionally emitted pollutants as part of its business activity, the existence of a periodic equipment malfunction that results in a hostile fire does not preclude application of the exclusion.

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Oregon	Martin v. State Farm Fire & Cas. Co., 932 P.2d 1207 (Or. Ct. App. 1997)	Environ. PD	Insured sought coverage for petroleum contamination of property which it sold.	Exclusion applied	Since the underlying claims arise out of the release of pollutants at property owned by the insured, the exclusion applies to bar coverage.
Pennsylvania	Lititz Mut. Ins. Co. v. Steely, 785 A.2d 975 (Pa. 2001)	Environ. BI	Insured sought coverage for bodily injury claim arising out of exposure to lead paint in rental property.	Exclusion not applied	Although lead paint is a pollutant, the process by which lead paint degraded and became available for ingestion and inhalation did not involve a discharge, dispersal, release, or an escape within the meaning of the exclusion.
Pennsylvania	Gamble Farm Inn, Inc. v. Selective Ins. Co., 656 A.2d 142 (Pa. Super. Ct. 1995)	Environ. BI	Insured sought coverage for bodily injury claims arising out of the release of carbon monoxide fumes in a restaurant.	Exclusion not applied	The word "atmosphere" is ambiguous, and the exclusion applies only to environmental contamination and does not apply to ordinary risks that occur within a building.
South Dakota	**South Dakota State Cement Plant Comm'n v. Wausau Underwriting Ins. Co., 616 N.W.2d 397 (S.D. 2000)**	**Environ. PD**	**Insured sought coverage for damages resulting from cement dust emissions.**	**Exclusion applied**	**Where the underlying complaint alleges that the damage arises out of contamination from cement dust, the absolute pollution exclusion applies to bar coverage.**
Texas	United Nat'l Ins. Co. v. Hydro Tank, Inc., 497 F.3d 445 (5th Cir. 2007), opinion amended, 525 F.3d 400 (5th Cir. 2008)	Environ. BI	Insured sought coverage for bodily injury claims arising out of exposure to toxic vapors and sludge.	Exclusion applied	A pollution exclusion applies whenever a pollutant causes harm by a physical mechanism enumerated in the policy, irrespective of where the injury took place or whether the pollutant was released into the environment.
Texas	Lexington Ins. Co. v. Unity/Waterford-Fair Oaks, Ltd., 2002 WL 356756 (N.D. Tex 2002)	Mold PD	Insured sought coverage for mold damage in apartment units caused by a severe rainstorm and flooding.	Exclusion applied	Mold falls within the scope of the term "fungi" in the exclusion, and coverage is barred because mold spores were released into the environment.
Texas	Mid-Continent Cas. Co. v. United States Fire Ins. Co., 1 S.W.3d 251 (Tex. Ct. App. 1999)	Environ. PD	Insured sought coverage for bodily injuries arising out of contaminated drinking water.	Exclusion applied	The exclusion is broad enough to cover the allegations of pollution and contamination in drinking water.

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Vermont	Agora Syndicate Inc. v. Safety Med. Sys. Inc., No. S0872-98 (Vt. Super. Ct. Sept. 27, 1999), reprinted in 14 Mealey's Ins. Litig. Rep. No. 3, Section F (Nov. 16, 1999)	Environ. PD	Insured, who disposed of medical wastes, was notified of contaminated groundwater by state.	Exclusion applied	A surplus lines insurer's absolute pollution exclusion is valid and enforceable.
Virgin Islands	Devcon Int'l Corp. v. Reliance Ins. Co., 2007 WL 3124767 (D.V.I. 2007)	Environ. BI	Insured sought coverage for numerous claims alleging bodily injury caused by exposure to excessive dust at an airport runway construction project.	Exclusion applied	An ordinary reading of the terms of the exclusion supports the unambiguous proposition that it applies to damages caused by the release of any substance that could cause irritation or contamination, including dust or other unidentified pollutants.
Virgin Islands	Amerada Hess Corp. v. Zurich Ins. Co., 2002 WL 356162 (3d Cir. 2002) (unpublished)	Environ. BI	Insured sought coverage for bodily injuries resulting from the release of a petroleum supplement at its oil refinery.	Exclusion not applied	The exclusion is ambiguous and should be construed to exclude only the costs of traditional environmental spills or discharges normally associated with the environmental discharge.
Virginia	State Auto Pro. & Cas. Ins. Co. v. Gorsuch, 323 F. Supp. 2d 746 (W.D. Va. 2004)	Property Damage	Insured sought coverage for property damage resulting from flood water discharged onto adjoining property.	Exclusion not applied	Uncontaminated flood water is not a pollutant, and the pollution exclusion does not apply to bar coverage.
Washington	Quadrant Corp. v. American State Ins. Co., 110 P.3d 733 (Wash. 2005)	Environ. BI	Insured sought coverage for bodily injury resulting from the inhalation of toxic fumes from deck sealant.	Exclusion applied	The exclusion is unambiguous when applied to the facts of this case since the deck sealant that released toxic fumes was a pollutant, and the language and the exclusion is not limited to traditional environmental pollution.
Washington	**Kent Farms, Inc. v. Zurich Ins. Co., 998 P.2d 292 (Wash. 2000)**	**Environ. BI**	**Insured sought coverage for bodily injury resulting from the sudden spraying of diesel fuel.**	**Exclusion not applied**	**The absolute pollution exclusion only relates to environmental damage and does not apply to the discharge of substances that may also be pollutants onto and into an individual.**

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Washington	City of Bremerton v. Harbor Ins. Co., 963 P.2d 194 (Wash. Ct. App. 1998)	Environ. PD	Insured sought coverage for claims based upon the emission of toxic and noxious gases, odors and fumes from the city's sewage treatment plant.	Exclusion applied	Liability for the alleged damages was subject to the absolute pollution exclusion because the underlying claims involve pollutants.
West Virginia	Supertane Gas Corp. v. Aetna Cas. & Sur. Co., 1994 WL 1715345 (N.D. W. Va. 1994)	Environ. PD	Insured sought coverage for pollution resulting from its prior operation of a coal gas fuel generation plant.	Exclusion applied	The exclusion is unambiguous and applies even if the insured was not an active polluter.
Wisconsin	Langone v. American Family Mut. Ins. Co., 731 N.W.2d 334 (Wis. Ct. App. 2007)	Environ. BI	Insured sought coverage for bodily injury arising out of the release of carbon monoxide fumes.	Exclusion not applied	The extraordinary concentration of carbon monoxide in the insured's rental property would not ordinarily be considered a pollutant, and the insured could reasonably expect coverage for damages caused by an accumulation of a substance that is routinely present.
Wisconsin	Guenther v. City of Onalaska, 588 N.W.2d 375 (Wis. Ct. App. 1998)	Environ. PD	Insured sought coverage for property damage resulting from the backup of sewage into his basement.	Exclusion not applied	The exclusion is ambiguous since the insured could have reasonably understood that the exclusion did not apply to a situation as routine as a domestic sewer backup, which caused damages that did not result from the toxic nature of the sewage.
Wisconsin	Donaldson v. Urban Land Interests, Inc., 564 N.W.2d 728 (Wis. 1997)	Environ. BI	Insured sought coverage for bodily injuries resulting from the release of carbon dioxide fumes.	Exclusion not applied	The definition of pollutants is ambiguous, and the insured could reasonably expect coverage from Hanover for personal injury claims arising from the inadequate ventilation of exhaled carbon dioxide.
Wyoming	Gainsco Ins. Co. v. Amoco Prod. Co., 53 P.3d 1051 (Wyo. 2003)	Environ. BI	Insured sought coverage for injuries sustained by truck driver resulting from release of hydrogen sulfide gas from vacuum truck during unloading.	Exclusion not applied	The exclusion is limited to environmental pollution; it cannot be said that the truck driver's death was caused by pollution.

Drywall Analogies:
Does an exclusion apply?

State	Citation	Facts	Finding	Comments
Alabama	United States Fid & Guar. Co. v. Bonitz Insulation of Ala., 424 So. 2d 569 (Ala. 1982)	Insured installed roof on school gymnasium. Within a year after completion, the roof began to leak, and water entry from the roof continued over the next several years until the roof was completely replaced. Thereafter, the city sued the insured alleging breach of contract by failing to perform a good and workmanlike manner and by failing to follow specifications in the installation of the roof.	Exclusion not applied	Since the roof is ultimately the insured's product in the sense that it is the end result of work performed by or on behalf of the insured, several of the exclusions apply to remove liability for damage to the roof itself from the coverage of the policy. If damage to the roof itself was the only damage claimed, the exclusions would work to deny the insured any coverage under the initial policy. However, there is also damage claimed to the ceilings, walls, carpets, and the gym floor. These damages are not excluded from coverage.
Alabama	**United States Fid. & Guar. Co. v. Warwick Dev. Co., 446 So. 2d 1021 (Ala. 1984)**	**Home purchasers alleged unworkmanlike construction and misrepresentations of material facts by builder and sought cancellation and rescission of sale and mortgage.**	**Not property damage**	**No evidence that misrepresentations caused physical injury to tangible property.**
Alabama	Aetna Ins. Co. v. Pete Wilson Roofing & Heating Co., 272 So. 2d 232 (Ala. 1972)	Insured entered into a contract with a general contractor for roofing and sheet metal work on an office building project. Thereafter, the roof began to leak, and an inspection determined that it was defective. The general contractor repaired or replace the roof and sued the insured for damages.	Exclusion applied	The roof installed by the insured was its product. Therefore, several business risk exclusions apply to exclude coverage in this case.
Alaska	United States Fire Ins. Co. v. Colver, 600 P.2d 1 (Alaska 1979)	Homeowners sued contractor alleging negligence and breach of warranties in construction of house, including heating system incorrectly installed and failed to function properly causing pipes to burst, flooding, and a ruined carpet; house lost excessive amount of heat due to faulty installation of doors and windows; and settling due to poor foundation work, including cracks in walls and ceilings.	Exclusion applied	Property damage to contractor's work or work product, arising out of his work or work product, is not covered by the policy.
Arizona	Custom Roofing Co. v. Transamerica Ins. Co., 584 P.2d 1187 (Az. Ct. App. 1978)	Insured entered into a contract to do roofing work on a building under construction. The roof of the building was damaged in a severe windstorm, and the building owner subsequently sued the contractor under theories of breach of contract, and negligence, arguing that the roof was installed in an unworkmanlike manner.	Exclusion not applied	In conformity with Federal Ins. Co. v. P.A.T. Homes, Inc., the court finds the policy to be ambiguous and interprets it to mean that coverage under the policy is extended to property damage resulting from a breach of warranty of workmanlike performance, but that property damage resulting from any other cause by reason of work performed is excluded.

Drywall Analogies:
Does an exclusion apply?

State	Citation	Facts	Finding	Comments
Arizona	Federal Ins. Co. v. P.A.T. Homes, Inc., 547 P.2d 1050 (Ariz. 1976)	Concrete contractor sued for allegedly constructing footings, stem walls, and floors for several houses in a residential construction project in an unworkmanlike manner.	Exclusion not applied	Exclusionary clauses are ambiguous and policy will be construed so as to not deny coverage for liability of insured for construction work done in an unworkmanlike manner.
California	**Volf v. Ocean Accident & Guarantee Corp., 50 Cal. 2d 373 (Cal. 1958)**	**Exterior stucco applied by contractor experienced cracking. Testing showed that stucco was the right mixture but below compressive strength.**	**Exclusion applied**	**The exclusions apply to exclude coverage for this type of damage.**
Colorado	McGowan v. State Farm Fire & Cas. Co., 100 P.3d 521 (Colo. Ct. App. 2004)	Insured entered into a contract to build a residence. After completion of the excavation, foundation, framing, and the construction of three levels encompassing 3,200 square feet, the homeowner discovered that the house had several structural problems, including bending studs, cut trusses, and warped boards, and they also observed that the house was swaying as a result of problems with foundation supports. They terminated the contract and engaged another contractor to make necessary repairs and to complete the construction of the house.	Exclusion applied	The homeowners were seeking to recover the expenditures they were required to make to repair the damage caused by the insured's faulty and incomplete work. Their claims fall squarely within the business risk exclusions.
Colorado	Worsham Constr. Co. v. Reliance Ins. Co., 687 P.2d 988 (Colo. Ct. App. 1984)	Insured general contractor sued subcontractor who performed the foundation work on office building for defects in the building caused by settlement of the foundation.	Exclusion not applied	The business risk exclusions are ambiguous and will be construed in favor of coverage. Only a construction which affords coverage for damage to the insured's work product arising out of that work product when such damage is caused by a breach of the warranty of workmanlike performance is reasonable.
Colorado	Colard v. American Fam. Mut. Ins. Co., 709 P.2d 11 (Colo. Ct. App. 1985)	Insured entered into a contract with homeowners to build a home. The homeowners terminated the contract because of negligent and unsatisfactory construction and hired other contractors to correct and complete the construction.	Exclusion not applied	The exclusions are ambiguous, and do not exclude coverage here.

Drywall Analogies:
Does an exclusion apply?

State	Citation	Facts	Finding	Comments
Delaware	Vari Builders, Inc. v. United States Fid. & Guar. Co., 523 A.2d 549 (Del. Super. Ct. 1986)	Homeowners contended that builder failed to construct home in a workmanlike manner and that, as a result, homeowners were forced to spend thousands of dollars to repair and reconstruct the home. They also alleged damage to personal property as a result a basement collapse and demanded compensation for expenditures incurred for storage and substitute living quarters.	Exclusion applied	Damage to any part of the house itself is damage to the work of the insured which is excluded. In addition, the property damage predicating the consequential damages sought is specifically excluded from coverage by the business risk exclusions. Therefore, damages flowing from such property damage are not covered by the policy.
Florida	West Orange Lumber Co. v. Indiana Lumbermens Mut. Ins. Co., 898 So.2d 1147 (Fla. Dist. Ct. App. 2005)	Contractor failed to provide the proper grade of cedar siding pursuant to contract specifications. After installation of some of the siding, owner halted work on project and ordered the contractor to take corrective action to provide siding as specified in the contract. The siding that had been installed was removed and replaced with a substitute product.	Exclusion applied	Failure to supply product specified in the contract is a business risk not covered by the policy. The policy provides protection for personal injury or for property damage caused by the completed product, but not for the replacement and repair of that product or to insure construction or contract deficiencies
Florida	**LaMarche v. Shelby Mut. Ins. Co., 390 So. 2d 325 (Fla. 1980)**	**Homeowners entered into a written contract for the construction of their home. The construction contract warranted and guaranteed all workmanship and materials for a term of five years from the date of delivery with regard to the structure. The work performed by the contractor proved to be deficient and the homeowners sought to recover the cost of the defective materials and workmanship.**	**Exclusion applied**	**The purpose of the insurance coverage is to provide protection for personal injury or for property damage caused by a completed product, but not for the replacement and repair of that product. Rather than coverage and payment for building flaws or deficiencies, the policy instead covers damage caused by those flaws.**
Georgia	Custom Planning & Dev., Inc. v. American Nat'l Fire Ins. Co., 606 S.E.2d 39 (Ga. Ct. App. 2004)	Purchaser of property contended that crosstie retaining wall built on site was defective because of poor soil compaction and the presence of trash and debris in the fill soil.	Exclusion applied	The cost of replacing or repairing defective work to make the building project conform to contractual requirements is not covered.

Drywall Analogies:
Does an exclusion apply?

State	Citation	Facts	Finding	Comments
Georgia	**Bituminous Cas. Corp. v. Northern Ins. Co. of N.Y., 548 S.E.2d 495 (Ga. Ct. App. 2001)**	**Homeowners hired the insured to build a new home. A deck attached to the master bedroom and extending on columns over the front entrance to the home began to leak, and the insured agreed to remove and reinstall the deck. Plastic sheeting used by the insured to cover the deck during the repairs blew away during a rainstorm, and water inundated the house causing extensive damage.**	**Exclusion applied**	**The business risk exclusions exclude coverage for water damage in the unfinished residence as a result of contractor's alleged negligence in building a deck.**
Georgia	Glens Falls Ins. Co. v. Donmac Golf Shaping Co., 417 S.E.2d 197 (Ga. Ct. App. 1992)	Contractor who built golf course for developer sought defense and coverage for liability for its alleged negligent placement and construction of golf course project partly on federally protected wetlands without obtaining necessary permits.	Exclusion not applied	The policy excludes coverage for damage to or impairment of the project as a result of defective work done by the builder. The damages sought by the developer against the builder, however, are not directly related to the cost of repairing and replacing deficiencies in the builder's work on the project -- and therefore excluded from the CGL coverage as business risks -- but rather are claims beyond the scope of the contractual expectations for additional tort damages caused by the alleged deficiencies in the builder's performance. As such, the business risk exclusions are not applicable to the type of tort damages sought in this case.
Georgia	Elrod's Custom Drapery Workshop v. Cincinnati Ins. Co. 371 S.E.2d 144 (Ga. Ct. App. 1988)	Decorating company sued insured drapery workshop alleging defective construction of draperies.	Exclusion applied	The exclusions clearly and unambiguously exclude coverage for property damage resulting from the insured's negligently constructed work product. All of the damages sought in this action, which include damage to reputation and lost profits, arising exclusively from faulty workmanship and not from some insurable event as defined in the policy.
Hawaii	Hurtig v. Terminix Wood Treating & Contracting Co., 692 P.2d 1153 (Haw. 1984)	Insured contracted to perform termite inspection and treatment of home sued by homeowner alleging failure to correctly perform contract leading to termite damage to the house.	Exclusion not applied	The work performed by the contractor was the inspection of the house and the application of chemicals. The loss here was not to the inspection or the treatment. The loss exceeded the inspection and treatment and went to the home itself.

Drywall Analogies:
Does an exclusion apply?

State	Citation	Facts	Finding	Comments
Illinois	Monticello Ins. Co. v. Wil-Freds Constr., Inc., 661 N.E.2d 451 (Ill. App. Ct. 1996)	Municipal building and garage built by insured alleged to contain construction defects, including abnormal voids and cracks in the concrete walls and columns in the parking garage, honeycombed concrete, abnormal cracking in the stairwell, exposure of rebar in a column, insufficient support for anchor bolts at a column, leaking in the parking garage, water damage to the lobby of the office building and basement under the lobby, interior water damage caused by water penetration from the roof, and unbalanced, defective HVAC system cracked floors and stairwells, and defective doors.	Exclusion applied	The damage to the building and parking garage fall within the own products exclusion in the policy.
Illinois	Western Cas. & Sur. Co. v. Brochu, 475 N.E.2d 872 (Ill. 1985)	Home constructed by insured experienced excessive settling, causing the foundation to crack, the support beams to sag, the doors and frames to be out of sync, and the interior fixtures to separate from the walls. Homeowners sued insured alleging that insured had breached an express warranty that the home would be built in a good and workmanlike fashion and that the insured had also breached a specific contract provision requiring an on-site soil test.	Exclusion applied	The exclusions limit the completed operations coverage provided by the policy by excluding damage to the product or work of the insured. The homeowners sought compensation solely for property damage to the house built by the insured. As such, the exclusions apply, and the claim is not covered.
Indiana	**Indiana Ins. Co. v. DeZutti, 408 N.E.2d 1275 (Ind. 1980)**	**Homeowner sued general contractor after discovery of serious cracking of mortar and bricks, alleging that the damage was caused by settling of the building due to improper construction of footings.**	**Exclusion applied**	**The policy excludes coverage for damage to the insured's work, or work done on his behalf, resulting from the work itself or any part of that work. The insured's work (or product) was the entire house and the damages to the house caused by the improper construction of the footings done on the insured's behalf are not covered under the policy.**

Drywall Analogies:
Does an exclusion apply?

State	Citation	Facts	Finding	Comments
Kansas	American States Ins. Co. v. Powers, 262 F. Supp. 2d 1245 (D. Kan. 2003)	Building owners sued contractor who constructed building alleging that the contractor breached the contract and was negligent by failing to construct the building in a workmanlike and safe manner according to the agreed specifications; to construct the building within the time agreed upon; to meet building codes for structural design; and to stay within the contract price.	Exclusion not applied	The exclusion barring coverage for property damage to "your work" applies here because the building was complete at the time of the damage and "your work" is defined to include warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work."
Kansas	**Owings v. Gifford, 697 P.2d 865 (Kan. 1985)**	**Homeowners alleged that builder built their home in a poor and unworkmanlike manner, used improper materials, and failed to follow generally accepted construction practices. They also alleged that the builder failed to adequately inspect and test the soil, failed to install foundation drainage, failed to secure a final building inspection, and failed to deliver an occupancy permit.**	**Exclusion applied**	**The exclusion precluding coverage for property damage to work performed by or on behalf of the insured arising out of work or any portion thereof, excluded coverage of property damage to residence arising out of negligent commissions or omissions of contractor.**
Kansas	B.A. Green Constr. Co. v. Liberty Mut. Ins. Co., 517 P.2d 563 (Kan. 1973)	The insured entered into contract to build university library. Prior to completion of the library but after partial occupancy, the air-conditioning system malfunctioned causing water to condense on the walls and ceiling and cause extensive damage to the interior of the building.	Exclusion applied	The undisputed facts disclose that the library was constructed by the insured, and thus the building was the insured's work product. The your work exclusion therefore applies and eliminates coverage for any damage to the library for which the insured may be liable under any theory.

State	Citation	Facts	Finding	Comments
Kansas	Kendall Plumbing, Inc. v. St. Paul Mercury Ins. Co., 370 P.2d 396 (Kan. 1962)	Plumbing contractor installed a heating and air-conditioning system in a building. Contractor purchased a refrigeration unit and a Square D starter from two different manufacturers and installed them. At the time of the installation, the contractor negligently failed to make the necessary pressure settings to the spring unit within the Square D starter. About two months after installation, a building employee disengaged the starter because of insufficient spring pressure to push back the contactor within the Square D starter. As a result, electricity arced across and welded the contactors together, so that the power provided through the starter did not shut off the refrigeration unit causing it to run without lubrication until it was damaged.	Exclusion applied	The contractor contended that the policy excludes only the defective part that caused injury but does not exclude other items handled or installed by it which were damaged by the defective item. The exclusion definitively states that any goods or products handled or work completed by the insured are excluded. The policy was intended to cover only damage to property or items which had not been handled by the insured. Goods or products handled by it, or work completed by it, are specifically excluded.

Drywall Analogies:
Does an exclusion apply?

State	Citation	Facts	Finding	Comments
Louisiana	**Calcasieu Parish Sch. Bd. v. Lewing Constr. Co., 971 So. 2d 1275 (La. Ct. App. 2007)**	**Epoxy terrazzo floor oozed and emitted an oily substance, and plaintiff sought damages for removal of the floor, costs of the investigation into and the remediation, removal and cleaning of the oily substance, and protective measures employed during such remediation.**	**Exclusion applied**	**Because the claims are for faulty product/work, they fall under the work product exclusion.**
Louisiana	**Joe Banks Drywall & Acoustics, Inc., v. Transcontinental Ins. Co., 753 So.2d 980 (La. Ct. App. 2000)**	**Sheet vinyl flooring installed by contractor became stained. The origin of the staining was never determined, but it apparently seeped up from beneath the vinyl.**	**Exclusion applied**	**The defects refer to property damage to the insured's work that resulted from a stain coming through the materials used by the insured. These circumstances fit squarely under the provisions of the policy exclusion for property damage to "your work."**
Louisiana	Allen v. Lawton & Moore Builders, Inc., 535 So. 2d 779 (La. Ct. App. 1988)	Buyers of house constructed by insured complained of various defects, including a foundation problem, problems with bricks, repeated flooding, and other structural and cosmetic defects. The buyers alleged that the flooding and structural defects were the result of the insured's lack of supervision during construction, failure to exercise ordinary skill in workmanship and quality control during construction, and failure to assure that the foundation was adequate and the fill under the house was stable.	Exclusion applied	The claim is for defects in the construction of the house constructed by the insured. The house is the contractor's work or work product. There is no allegation that damage was caused to any other property. The exclusion clearly excludes coverage for property damage to the named insured's products, and for property damage to work performed by the named insured arising out of the work or any portion thereof. The damages claimed are consequences of the alleged defect in workmanship and defects in the work performed by the insured for which the policy provides no coverage.
Louisiana	Vobill Homes, Inc. v. Hartford Accident & Indem. Co., 179 So. 2d 496 (La. Ct. App. 1965)	Homeowner sued contractor for defects in house constructed by him, alleging that the defects, such as a defective or insufficient slab foundation, resulted from negligent acts or omissions when the insured construct the home, and that these defects became apparent after the insured turned the home over to the homeowners.	Exclusion applied	The damages sought from the insured are the cost of repairing defects in the house constructed by the insured. These defects are alleged to have resulted through faulty construction on the part of the insured. The exclusion unambiguously excludes property damage to goods or products manufactured or sold or were completed by or for the named insured, and applies to the house manufactured or completed by the insured. In other words, the policy excludes from coverage any injury to the work product itself by reason of its own defectiveness.
Maryland	Century I Joint Venture v. United States Fid. & Guar. Co., 493 A.2d 370 (Md. Ct. Spec. App. 1985)	Purchasers of individual condominium units sued developer alleging faulty design and construction.	Exclusion applied	Insurer not obligated to indemnify or defend developers for faulty design and construction.

Drywall Analogies:
Does an exclusion apply?

State	Citation	Facts	Finding	Comments
Maryland	Minnicks, Inc. v. Reliance Ins. Co., 422 A.2d 1028 (Md. Ct. Sepc. App. 1980)	Insured heating contractor installed heating systems in houses built by developer. Four purchasers sued the developer alleging that the heating systems were defective. The damages claimed including the costs to repair and/or replace the defective systems and the cost of using alternative heating systems while the defective systems were inoperable. In addition, two homeowners alleged loss of consortium allegedly caused by the developer's negligence and breach of warranty.	Exclusion applied	The damages claimed for repair and/or replacement of the heating systems and for the use of alternative heating systems fall within the scope of the exclusions.
Massachusetts	Mello Constr., Inc. v. Acadia Ins. Co., 874 N.E.2d 1142, 2007 WL 2908267 (Mass. App. Ct. 2007) (unpublished)	General contractor sought coverage for cost of repairing defective concrete slab constructed by subcontractor.	Exclusion applied	Coverage for defective installation of concrete slab is excluded under the policy.
Massachusetts	Davenport v. United States Fid. & Guar. Co., 778 N.E.2d 1038, 2002 WL 31549391 (Mass. App. Ct. 2002) (unpublished)	Painting subcontractor engaged to paint a residential home failed to apply a primer coat before putting on a final coat of exterior paint. As a result, the paint peeled and flaked, causing the general contractor to redo the work. The general contractor then sought to recover against the subcontractor's insurance policy.	Exclusion applied	The injury to work exclusion is designed to make clear that the policy does not encompass an incident of faulty workmanship, but rather faulty workmanship which causes an accident.
Massachusetts	Commerce Ins. Co. v. Betty Caplette Builders, Inc., 647 N.E.2d 1211 (Mass. 1995)	Owners of houses built and sold by developer sued developer for property damage to their real estate resulting from defective septic systems.	Exclusion not applied	If the insurer intended to exclude all property damage to the work product of the insured arising out of that work, including damage for breach of warranty, that limitation must be clearly expressed in the policy. Here, it was not. On the contrary, under the clear wording of the policy, and expectation of coverage was created for claims arising from property damage to the insured's work product grounded on breach of warranty.

Drywall Analogies:
Does an exclusion apply?

State	Citation	Facts	Finding	Comments
Massachusetts	Lusalon, Inc. v. Hartford Accident & Indem. Co., 498 N.E.2d 1373 (Mass. 1986)	While installing concrete blocks at construction site, masonry subcontractor accidentally splattered mortar on adjacent metal door and window frames. At the general contractor's direction, masonry subcontractor cleaned the frames. When the painting subcontractor later painted the frames, the finish paint peeled, due to the masonry subcontractor's failure to properly remove the muriatic acid used as a cleaning agent. The general contractor repaired the frames and sued the masonry subcontractor to recover the cost of repairs. The Special Master concluded that the finish paint failed because of the masonry subcontractor's unworkmanlike use of muriatic acid.	Exclusion applied	The policy excludes coverage for property damage to that particular part of any property the restoration, repair or replacement of which has been made or is necessary by reason of faulty workmanship thereon by or on behalf of the insured. This exclusion applies to be masonry subcontractor's work in cleaning the frames.
Michigan	Radenbaugh v. Farm Bureau Gen. Ins. Co. of Mich., 610 N.W.2d 272 (Mich. Ct. App. 2000)	Seller of mobile home provided erroneous schematics and instructions to contractors hired by buyer to construct the mobile home's basement foundation and to erect the mobile home on its basement.	Exclusion not applied	Complaint alleged damages to homeowners' property (i.e., the homeowners' basement and foundation), and did not pertain solely to the product of the insured (i.e., the mobile home). Thus, the exclusion did not apply.
Michigan	Hawkeye-Sec. Ins. Co. v. Vector Constr. Co., 460 N.W.2d 329 (Mich. Ct. App. 1990)	After concrete obtained from concrete supplier had been poured by subcontractor, testing revealed that concrete did not meet the project's plans and specifications. Subcontractor then removed and repoured 13,000 yards of concrete and submitted claim to insurer.	Exclusion applied	Coverage for the restoration, repair or replacement of property, not on the premises of the insured, which has been made or is necessary by reason of faulty workmanship by or on behalf of the insured is excluded.
Michigan	Fresard v. Michigan Millers Mut. Ins. Co., 296 N.W.2d 112 (Mich. Ct. App. 1980), aff'd by an equally divided court, 327 N.W.2d 286 (Mich. 1982)	Homeowners sued builders after experiencing problems with new house, including water accumulation on the basement floor, recurrent flooding of the basement, and deterioration of the basement walls. The cause of the problem was an opening in the drainage system which allowed sand to flow into the system and be carried away. Some of the sand came from under the footings, causing the corner of the house and the basement wall to drop and buckle. This problem was accentuated by the installation of standard drain tile material in an abnormal ground condition. The drain tile allowed entry of sand into the system.	Exclusion not applied	If the insurer intended to exclude all property damage to the work product of the insured arising out of that work, including damage for breach of warranty, that limitation must be clearly expressed in the policy. Here, it was not. On the contrary, under the clear wording of the policy, an expectation of coverage was created for claims arising from property damage to the insured's work product grounded on breach of warranty.

Drywall Analogies:
Does an exclusion apply?

State	Citation	Facts	Finding	Comments
Minnesota	Knutson Constr. Co. v. St. Paul Fire & Marine Ins. Co., 396 N.W.2d 229 (Minn. 1986)	General contractor sued after apartment building developed excessive cracks, staining and spalling on building exterior, and loose bricks, mortar, prefabricated brick panels, and, steel connectors in contact with the brick panels.	Exclusion applied	Building damage caused by general contractor's breach of construction contract due to faulty workmanship or use of materials was a business risk to be borne by contractor.
Minnesota	Quality Homes, Inc. v. Bituminous Cas. Corp., 355 N.W.2d 746 (Minn. Ct. App. 1984)	Insured built a home over an unknown peat deposit. All site preparation work and construction of the foundation was done by a contractor other than the insured.	Exclusion applied	A CGL policy, such as the one at issue in this case, is not intended to cover damage to the work product of the insured.
Minnesota	Ohio Cas. Ins. Co. v. Terrace Enters., Inc., 260 N.W.2d 450 (Minn. 1977)	Soil engineer hired to test soil before construction of apartment buildings recommended that the project be stopped or slowed until soil conditions improved for laying the footings and the foundation, and specifically warned of the need to protect the soil and concrete from freezing. The insured builder proceeded with the work, and although it made efforts to protect the soil and concrete from the climate, its efforts were inadequate. Thereafter, the building had settled and threatened collapse.	Exclusion not applied	The care, custody, or control exclusion does not apply because the insured did not have care, custody, or control over the building as a whole. Moreover, the building as a whole was not the work performed by the insured, and thus the damage to it as a whole is not excluded by the work performed exclusion. Lastly, the apartment building was not withdrawn from the market because of a suspected defect or defect in another building. It was withdrawn because it was damaged by defective construction. Thus, the exclusion for damages claimed for the withdrawal of the insured's product or work does not apply.
Missouri	Columbia Mut. Ins. Co. v. Schauf, 967 S.W.2d 74 (Mo. 1998)	Painter cleaning spraying equipment in house under construction after spraying cabinets started fire, resulting in extensive damage requiring replacement of cabinets sheetrock, insulation, subflooring, molding, windows, a sliding door, and textured ceilings.	Exclusion applied in part	The policy provided coverage for the damage to the home, but not for the damage to the cabinets.

Drywall Analogies:
Does an exclusion apply?

State	Citation	Facts	Finding	Comments
Missouri	American Fam. Mut. Ins. Co. v. Ragsdale Concrete Finishing, Inc., 725 S.W.2d 623, 625 (Mo. Ct. App. 1987)	Contractor who constructed concrete swimming pool sued after cracks appeared in swimming pool and surrounding concrete deck which also began to sink.	Exclution not applied	There is evidence that the damage to the pool was not a result of defective or faulty workmanship on the part of the contractor. Rather, the evidence indicates that the damage resulted from the settlement of the underlying fill, for which the contractor was not responsible.
Missouri	Taylor-Morley-Simon, Inc. v. Michigan Mut. Ins. Co., 645 F. Supp. 596 (E.D. Mo. 1986), aff'd, 822 F.2d 1093 (1987)	Two years after homeowners took possession of their residents, they discovered that the concrete slab which supported a portion of their residence was sinking, allegedly because the slab was not supported by piers and the subsoil under the slab was not properly compacted. Because of the settling slab, the homeowners asserted that the walls and ceilings of the house started to crack, hot and cold water lines and gas lines under the slab had become stressed, and the heating and air-conditioning ducts had torn loose, leaving minimal heat in part of the house. They also noted that the sewer line was unsupported and claimed violation of building codes because the natural gas line installed under the slab was not properly protected by conduits and proper venting, and the heating ducts under the floor were not encased in 2 inches of concrete as required by the building code.	Exclusion applied	The insured's product is the whole home. Since the insured is only being sued for property damage suffered in the insured's own product arising out of that product or its parts, the exclusion applies.

Drywall Analogies:
Does an exclusion apply?

State	Citation	Facts	Finding	Comments
Missouri	Biebel Bros., Inc. v. United States Fid. & Guar. Co., 522 F.2d 1207 (8th Cir. 19750)	Roofing contractor entered into contract to apply roofing materials to a flat metal roof deck that had been constructed by third parties. After applying roofing materials, the contractor discovered that it applied asphalt that was unsuitable for the purpose. The contractor then had to remove the metal deck and all the materials it had applied to the roof to correct the problem. This was done by cutting the unsuitable roofing material into small pieces and removing the debris. New replacement materials were then applied in order to restore the roof to the stage the work was in when the mistake was discovered. The contractor then sought to recover the cost of removing the materials damaged by the application of the defective shingles and the cost of replacing them with new materials, including labor expenses. Contractor also sought to recover 20% of the amount for overhead and 10% for profit. The damages sought did not include the cost of the asphalt.	Exclusion applied	Coverage for the contractor's removal of its own defective work and material is excluded from the policy. Moreover, because all the damaged products were removed and replaced, the building itself was not damaged.
Missouri	Home Indem. Co. v. Miller, 399 F.2d 78 (8th Cir.1968)	Homeowners sued developer after the outside walls and foundation of their home began to crack. Subsequent inspection by a civil engineer revealed that the damage was caused by the developer's improper placement of footings and improper installation of the roof of the home.	Exclusion applied	The policy unambiguously excludes property damage to goods or products manufactured or sold or work completed by or for the named insured and applies to the facts of this case.
Montana	Stillwater Condo. Assn. v. American Home Assurance Co., 508 F. Supp. 1075 (D. Mont. 1981), aff'd, 688 F.2d 848 (9th Cir. 1982), cert. denied, 460 U.S. 1038 (1983)	Condo association sued insured developer to recover damages for faulty workmanship, including leaky roofs, delaminating siding, and improperly installed wiring and plumbing.	Exclusion applied	The exclusions are not ambiguous and apply on these facts.

Drywall Analogies:
Does an exclusion apply?

State	Citation	Facts	Finding	Comments
Nebraska	Auto-Owners Ins. Co. v. Home Pride Ins. Cos., 684 N.W.2d 571 (Neb. 2004)	Owner of apartment buildings alleged that builder did not install roofing shingles in a workmanlike manner and that such faulty workmanship caused substantial and material damage to roof structures and buildings. The building owner also alleged that the shingles themselves were defective.	Exclusion not applied	The your work exclusion does not apply because the damage claim extends beyond the cost to simply repair and replace the contractor's work, i.e., to re-shingle the roofs. The building owners allege that the contractor's faulty workmanship resulted in substantial damage to the roof structures and buildings. Therefore their claimed damages to the roof structure and buildings fall outside of the exclusion. The impaired property exclusion does not apply because damage to the roof structures and buildings cannot be repaired or restored by simply re-shingling the apartment roofs.
Nebraska	Hartford Acc. & Indem. Co. v. Olson Bros., Inc., 188 N.W.2d 699 (Neb. 1971)	Roofing contractor installed wood fiberboard roof on factory building that cupped or warped so that water stood in each of the roof panels after rain. There was no damage to property other than the roof. Other physical parts of the building, such as steel walls, foundation, etc., were not damaged by the roof deterioration.	Exclusion applied	The business risk exclusions apply here because the damage was confined to the product or work of the insured. The evidence was uncontradicted that the defect was confined to the roof itself. No other portion of the building suffered physical damage. Further, the evidence was uncontradicted that replacement of the roof would completely restore the premises both physically and as to market value.
Neveda	McKellar Dev. of Nev., Inc. v. Northern Ins. Co. of N.Y., 837 P.2d 858 (Nev. 1992)	Insured alleged to have defectively designed and constructed an apartment complex and that, as a result, the buildings were falling apart. The source of the problem appeared to be faulty soil compaction, resulting in the sinking and breakup of the apartment buildings. Subcontractors performed the soil compaction work.	Exclusion applied	Because site preparation is a service and not a product, the products exclusion does not apply here.
New Hampshire	Commercial Union Assurance Cos. v. Gollan, 394 A.2d 839 (N.H. 1978)	Insured built home whose roof collapsed shortly after owner took possession.	Exclusion not applied	The court finds the exclusions ambiguous. This case presents a situation in which, taking the insurance policy as a whole, a reasonable person could believe that certain occurrences were covered, notwithstanding that the insurance company intended and considered them to be excluded. In order to exclude occurrences from coverage in an insurance policy, the insurer must clearly state the exclusion in conjunction with whatever sections it is intended to modify.

Drywall Analogies:
Does an exclusion apply?

State	Citation	Facts	Finding	Comments
New Jersey	Weedo v. Stone-E-Brick, Inc., 405 A.2d 788 (N.J. 1979)	Insured contracted to pour a concrete flooring on a veranda and apply stucco masonry to the exterior of a house. The completed job revealed cracks in the stucco and other signs of faulty workmanship, such that the homeowners had to remove the stucco and replace it with a proper material. Insured also performed roofing and gutter work on another home. The owners of that home contended that the work was defective and sought to recover the costs of repairing or replacing the defective construction.	Exclusion applied	The insured's products and work performed exclusions apply to exclude coverage. The policy does not cover an accident of faulty workmanship but rather faulty workmanship which causes an accident.
New York	Zandri Constr. Co. v. Firemen's Ins. Co., 440 N.Y.S.2d 353 (N.Y. App. Div. 1981)	Insured's sued for defective work product resulting from its failure to construct a church in accordance with plans and specifications, to use specified materials, and to install specified materials and perform its labor in a workmanlike manner.	Exclusion applied	The exclusions are not ambiguous. The insurers clearly did not intend to provide coverage for claims against their insured for breach of express or implied warranties of workmanship when the damages claimed were the cost of correcting the work itself. The risk that the insurers clearly intended to cover was the possibility that the work product of the insured, once completed, would cause bodily injury or damage to property other than to the product or completed work itself, and for which the insured might be found liable.
North Carolina	William C. Vick Constr. Co. v. Pennsylvania Nat'l Mut. Cas. Ins. Co., 52 F. Supp. 2d 569 (E.D.N.C. 1999)	Roofing subcontractor installed waterproofing membrane upside down, resulting in numerous leaks and requiring numerous repairs.	Exclusion applied	Claims alleging defective workmanship to a product or performance of a contract as to the very property which has been contracted for are excluded.
North Carolina	Western World Ins. Co. v. Carrington, 369 S.E.2d 128 (N.C. Ct. App. 1988)	Contractor who performed waterproofing work on a building and parking deck project sued after water was discovered leaking through part of the top level of the parking deck. The leaking damage several cars parked in the lower deck and caused some cracking in parts of the deck's concrete slabs. The claim asserted against the contractor was for the cost of providing an alternate waterproofing system.	Exclusion applied	The work product exclusion applies to the claim asserted here. In this case, the only claim was for costs incurred in substituting or replacing the protective functions which the insured's original waterproofing work should have provided. The damages sought were solely for bringing the quality of the insured's work up to the standard bargained for.
North Dakota	Ernst v. ACUITY, 704 N.W.2d 869 (N.D. 2005)	Homeowners sued flooring contractor seeking recovery for costs of removing improperly installed flooring, purchase of replacement flooring, and installation of new flooring.		The operations exclusion expressly and unambiguously excludes coverage for the claimed damages predicated on the contractors' defective workmanship and failure to follow manufacturers' instructions.

Drywall Analogies:
Does an exclusion apply?

State	Citation	Facts	Finding	Comments
North Dakota	Grinnell Mut. Reinsurance Co. v. Lynne, 686 N.W.2d 118 (N.D. 2004)	Homeowner hired contractor to raise house off foundation, remove old and construct new foundation. House fell off support jacks and fell three feet into basement. The insurer contended that the house fell due to the insured's faulty workmanship.	Exclusion applied	Business risk exclusions are intended to provide coverage for tort liability, but not for contract liability of the insured for loss because the product or completed work was not that for which the other party had bargained. The exclusions are meant to remove coverage for risks that are subject to manipulation by the insured or a third-party.
North Dakota	Fisher v. American Fam. Mut. Ins. Co., 579 N.W.2d 599 (N.D. 1998)	Homeowner hired contractor to sand and apply a polyurethane finish to a newly installed hardwood floor. Within a few months of the sanding and refinishing, wide gaps began to appear between sections of flooring and individual boards began splitting.	Exclusion not applied	Coverage for the damage to the flooring installed in the home is not excluded from the policy. Although the policy provided coverage for repair and replacement of the flooring, it did not provide coverage for replacement of the finish or the labor and applying the finish, which was the insured's work and product.
North Dakota	Aid Ins. Servs., Inc. v. Geiger, 294 N.W.2d 411 (N.D.1980)	Contract dispute over construction delays, faulty workmanship, and alleged defects in the construction of a large warehouse.	Exclusion not applied	Exclusion for liability assumed by the insured under any contract or agreement is ambiguous and does not apply.
Ohio	Erie Ins. Exch. v. Colony Dev. Corp., 736 N.E.2d 941 (Ohio Ct. App. 1999)	Condo association sued developer for damages allegedly arising out of developer's design, construction and sale of condominium complex. The claims asserted against the developer included negligence, breach of express warranty, breach of contract, strict liability, and fraudulent concealment. The complaint alleged damages to the condominium units, to the common areas, as well as to the surrounding landscape, including death of and damage to major trees, excessive erosion, and excessive accumulation of water.	Exclusion applied in part	The work performed exclusion excludes liability for damages to the work performed by the developer, i.e., damages to the condominium units and common areas constructed and designed by the developer. However, the exclusion would not apply to damages to the surrounding landscape, including erosion and death of major trees, if those damages are not to work performed by the developer.
Ohio	Owners Ins. Co. v. Reyes, 1999 WL 769561 (Ohio Ct. App. 1999)	Insured contracted to perform certain construction work on a home. The homeowners claim that the insured never completed its work and that significant portions of the completed work were substandard. They filed suit, alleging breach of contract, fraudulent misrepresentation, and willful and wanton deviation from professional standards. They incorporated a 14 page architect's report detailing numerous construction deficiencies, building code violations, and consequential damage arising from the work that had been performed.	Exclusion applied	All of the damages complained of arise from either an alleged breach of contract or improper performance of the work which was done. The former is outside the definition of an occurrence, and the latter is clearly excluded from coverage.

Drywall Analogies:
Does an exclusion apply?

State	Citation	Facts	Finding	Comments
Ohio	Zanco, Inc. v. Michigan Mut. Ins. Co., 464 N.E.2d 513 (Ohio 1984)	Insured alleged to have breached its duty to construct condominiums in a workmanlike manner, thereby causing defects in the structure. The insured did not deny such defects, but rather claimed that the fault lay with its suppliers, who allegedly furnished the insured with defective materials.	Exclusion applied	The work performed and product exclusions apply to these facts and exclude coverage in this case.
Oklahoma	Dodson v. St. Paul Ins. Co., 812 P.2d 372 (Okla. 1991)	School board sued builder alleging that roof of new school building was poorly constructed, causing leaks and interior damage to the school building. Roofing subcontractor had used defective and/or nonspecified materials, and improperly installed roof.	Exclusion applied	The exclusions eliminate coverage for property damage caused by lack of quality or performance of the insured's products and for any repair or replacement of the faulty work performed by or on behalf of the insured.
Oklahoma	Hartford Accident & Indem. Co. v. Pacific Mut. Life Ins. Co., 861 F.2d 250 (10th Cir. 1988)	The insured furnished and installed a reflective, insulated glass curtain wall system on a building under construction. The system consisted of an aluminum framework anchored to the concrete floor slabs, insulated glass, vision panels, and spandrel panels. Because it constituted the exterior wall, the system was an integral part of the building. The system as installed was deficient and defective in that the window units cracked and broke, and the insulating glass units and reflective coating surfaces deteriorated. As a result of these problems, parts of the building suffered physical damage. This damage included cracks and breaks in the concrete floor slabs around the wall anchors and damage due to water leakage.	Exclusion applied	With respect to policy covering injury to or destruction of tangible property, but excluding coverage for property damage to insured's products and work, and materials furnished in connection therewith, coverage was provided only for diminution in value of building, if any, in excess of costs of replacing defective curtain wall. With respect to umbrella policy that defined property damage as physical injury or destruction of tangible property, there was no coverage for any diminution in value of the building.

State	Citation	Facts	Finding	Comments
Pennsylvania	Gene & Harvey Builders, Inc. v. Pennsylvania Mfrs. Ass'n, Inc., 517 A.2d 910 (Pa. 1986)	Purchaser of lot contracted with builder to construct house. Less than two years after completion, the homeowners sued the contractor alleging that the land had subsided and had fallen away from the premises, and that this, along with defects in construction, caused doors to come ajar and floors to become unstable. The complaint further alleged that the house was useless because of the subsidence, and that sinkholes and subsidence on the land were known to the contractor, and the contractor concealed the subsidence by filling in sinkholes. The homeowners also alleged that the construction was performed negligently and in an unworkmanlike manner with knowledge of the defects and subsidence of the land.	Exclusion applied	The complaint alleges that the contractor performed negligently and in an unworkmanlike fashion, that he concealed the presence of sinkholes and filled them under cover of darkness, and that he misrepresented the condition of the premises to the homeowners. All these claims are excluded from coverage either because they are not occurrences, i.e., accidental events, or because they fall under either the your product or your work exclusions.
Rhode Island	Employers Mut. Cas. Co. v. Pines, 723 A.2d 295 (R.I. 1999)	Insured hired by general contractor to paint windows installed by general contractor in a home. After the insured finish painting the windows, the general contractor noticed scratches on the window panes that he believed occurred when the insured sanded the window frames. He then sued the insured to recover damages to the panes, alleging negligence and breach of contract.	Exclusion applied and not applied	The policy exclusion for faulty workmanship is unambiguous and enforceable. If the insured actually performed work on the window panes (for example, by taping the surface of the panes during the pre-painting process, or by cleaning and/or scraping the panes before or after applying paint to the frames), and he negligently damaged the panes as part of such a preparation or cleanup operation, then the damage would fall within the exclusion for incorrectly performed work. However, if the insured did not intentionally perform any work on the window panes and accidentally scratched them when performing work on the frames, the exclusion would not apply.
South Carolina	Century Indem. Co. v. Golden Hills Builders, Inc., 561 S.E.2d 355 (S.C. 2002)	Homeowners alleged that the synthetic stucco exterior of their home was constructed in a manner that caused moisture damage to the home's properly constructed substrate and framing.	Exclusion applied	Coverage for the repair and/or replacement of the substrate and substructure of the home is excluded by the faulty workmanship exclusion.
South Carolina	Engineered Prods., Inc. v. Aetna Cas. & Sur. Co., 368 S.E.2d 674 (S.C. 1988)	Insured contracted to design, fabricate, and install a high-rise rack storage system at a job site. While the system was under construction, a violent storm collapsed and damaged nearly all of the racks then in place. The insured was later sued, and was alleged to have failed to comply with the anchoring specifications in the contract.	Exclusion applied	The policy excludes liability for damages resulting from the restoration, repair, or replacement of the insured's own defective work. The replacement of the rack system lost in the storm was made necessary by reason of faulty workmanship when the insured failed to anchor the system properly, and this liability is excluded from the policy.

Drywall Analogies:
Does an exclusion apply?

State	Citation	Facts	Finding	Comments
South Dakota	Haugan v. Homes Indem. Co., 197 N.W.2d 18 (S.D. 1972)	Building owner sued contractor who had constructed an aircraft hangar and office building claiming that the contractor failed to perform in a workmanlike manner by failing to provide proper footings and other foundations and as a result thereof, the weight-bearing portions of the structure sank in the ground and separated from the rest of the foundation and flooring, and that the whole structure, including windows, doors, floors and all other portions of the building had fallen out of line.	Exclusion applied	According to the allegations of the complaint, the completed hangar building, in its entirety, constituted the insured's work product. He designed and constructed it. The damages sought related solely to the insured's work product or to work performed by him in the construction of the building there were no other damages claimed. The exclusion of coverage for liability on a claim arising out of damage to the work product of the insured unambiguously applies to these facts.
Tennessee	Vernon Williams & Son Constr., Inc., v. Continental Ins. Co., 591 S.W.2d 760 (Tenn. 1979)	Builder failed to determine weight-bearing capacity of soil upon which it built a warehouse, and cracks developed in wall and floor as a result.	Exclusion applied	The policy does not provide coverage for breach of contract grounded upon faulty workmanship or materials, where the damages claimed are the cost of correcting the work itself.
Texas	CU Lloyds of Texas v. Main St. Homes, Inc., 79 S.W.3d 687 (Tex. App. 2002)	Owner of a home constructed by general contractor in subdivision sued general contractor for structural defects in the home's construction, alleging that contractor received warnings that the foundations in the homes constructed in the subdivision, as designed, were inappropriate for the subdivision's soil condition, and that the general contractor disregarded the warnings and knowingly proceeded with construction. The homeowner sought damages for fraud, breach of implied warranty, negligence, and fraudulent conveyance.	Exclusion not applied	The business risk exclusions do not preclude coverage in this case.
Texas	Acceptance Ins. Co. v. Newport Classic Homes, 2001 WL 1478791 (N.D. Tex. 2001)	Residential homebuilder sued by homeowners for negligence, gross negligence, breach of contract, breach of warranty, and fraud, alleging faulty design and construction of their home.	Exclusion applied	It is undisputed that the home is real property and that the builder performed operations on that property. Because it is clear that the damage to the home originated from the builder's faulty construction of the home, the operations exclusion applies.
Texas	Malone v. Scottsdale Ins. Co., 147 F. Supp. 2d 623 (S.D. Tex. 2001)	Insured entered into contract to construct commercial improvements to office and warehouse complex. Property owners sued the insured alleging numerous failures to properly construct the improvements.	Exclusion applied	The complaint alleges that the structures built by the insured were practically inoperable as a result of numerous failures to build to specification. The exclusions are unambiguous and apply to exclude coverage for faulty workmanship.

Drywall Analogies:
Does an exclusion apply?

State	Citation	Facts	Finding	Comments
Texas	Hartford Cas. Co. v. Cruse, 938 F. 2d 601 (5th Cir. 1991)	The insured defectively performed foundation leveling services on a house. The homeowners sued the insured, claiming damages for correcting the defective foundation leveling, for diminishing of the house's market value after repairs, and for damages to various other parts of the house, including doors out of plumb, windowsills and countertops abnormally out of level, separation of interior walls from the floor, and cracked sheetrock.	Exclusion not applied	The decisive issue here is the definition of the insured's work product. The homeowners hired the insured to perform foundation work. Damage due to defective foundation work that affected property other than the foundation does not fall within the scope of the exclusion. The exclusion only applies to the cost of repairs to the foundation itself, and does not apply to the diminution in the value of the home that remained after correction of the insured's faulty work, and to repair costs for other property -- such as sheetrock, floors, doors, window sills -- to the extent that these particular items of damage require repair other than to the foundation itself.
Utah	Overson v. United States Fid. & Guar. Co., 587 P.2d 149 (Utah 1978)	Insured had subcontracted to construct two quonset-type metal buildings to be used for potato storage. Other subcontractors were engaged to furnish the steel, footings, foundation and electrical work, to pour concrete, and to provide certain carpentry work. When almost completed, one of the buildings was totally destroyed by fire. The general contractor had directed the insured to enlarge louvered ventilation panels. When the insured's employees encountered difficulty in removing one of the panels, an acetylene torch was used in attempt to cut the head off of a stripped bolt. The flame from the torch suddenly ignited the foam insulation and the building was totally destroyed within minutes.	Exclusion applied	The care, custody, or control exclusion is clear and unambiguous and applies to the facts of this case. In addition, the damage in question was property damage to work performed by the insured (erecting and insulating building) which arose out of work done by the insured employees (cutting bolt and removing louvers) and material supplied by the insured (foam insulation).
Vermont	Peerless Ins. Co. v. Wells, 580 A.2d 485 (Vt. 1990)	Homeowner entered into contract with builder for construction of new concrete slab home which required the contractor to provide necessary to fill and soil compaction. The homeowners allege that improper compaction of the so-caused the slab to settle, resulting in extensive structural and cosmetic damage to the house.	Exclusion applied	The exclusions read together limit coverage afforded by the policy to damage to property other than the insured’s work.

Drywall Analogies:
Does an exclusion apply?

State	Citation	Facts	Finding	Comments
Virginia	Hotel Roanoke Conference Ctr. Comm'n v. Cincinnati Ins. Co., 303 F. Supp. 2d 784 (W.D. Va. 2004)	Owner of conference center located adjacent to hotel engaged in repairs to conference center closing it for six months. The closure affected 60 guest bedrooms and a restaurant located in the hotel. Consequently, the hotel, which held an easement to the conference center, lost significant revenues from canceled bookings.	Exclusion applied	Damage resulting from the insured's defective performance of the contract are not covered losses under a CGL policy.
Virginia	Nationwide Mut. Ins. Co. v. Wenger, 278 S.E.2d 874 (Va. 1981)	Insured constructed poultry houses that collapsed from the weight of snow and ice.	Exclusion applied	When the completed operation of the insured causes injury to a person or damage to property, the policy applies, unless the injury is to the completed operation itself. The exclusion precludes coverage under the facts presented here since the damages claimed were for repair of the structures.
Washington	Federated Serv. Ins. Co. v. R.E.W., Inc., 770 P.2d 654 (Wash. Ct. App. 1989)	General contractor who constructed controlled atmosphere storage rooms for fruit grower, used an inner panel liner that warped and waffled, causing the air seal necessary for a controlled atmosphere environment to rupture.	Exclusion applied	The exclusions apply. The insured cannot recover under the policies for its own faulty product. Damage to the building constructed by the insured caused by use of defective materials was also damage to its product and comes within the policy exclusion.
West Virginia	Helfeldt v. Robinson, 290 S.E.2d 896 (W. Va. 1981)	Homeowners sued builder alleging that the home they purchased was faulty in design, material and construction, and had not been built in a workmanlike manner, and that the builder had acted in a negligent manner and breached its contract and violated implied and express warranties of fitness for the home.	Excludion applied	The exclusion for damage to contractor's product applied, despite the fact that another exclusion contained an exception for warranty claims.
Wisconsin	Stuart v. Weisflog's Showroom Gallery, Inc., 753 N.W.2d 448 (Wis. 2008)	Homeowners sued the insured for damages resulting from alleged misrepresentations, and design and construction defects, related to a home remodeling project.	Exclusion applied	Your work exclusion precluded coverage for damages caused by contractor's misrepresentations and negligence.
Wisconsin	Vogel v. Russo, 613 N.W.2d 177 (Wis. 2000)	Contractor provided faulty masonry and concrete work in construction of new home. Shortly after occupancy, homeowners began noticing problems, including water spots appearing on walls, efflorescence around the perimeter of the basement, other stains from water penetration, a severe water leak in a bedroom and in the kitchen damaging wallpaper and baseboards, and crumbling chimney caps.	Exclusion applied	CGL policy covers only collateral property damage associated with the contractor's defective work, not the defective masonry itself, the cost to repair or replace it, or any effect on the home's value it may have had.

Drywall Analogies:
Does an exclusion apply?

State	Citation	Facts	Finding	Comments
Wisconsin	Bulen v. West Bend Mut. Ins. Co., 371 N.W.2d 392 (Wis. Ct. App. 1985)	Basement wall collapsed during construction of private residence.	Exclusion applied	The coverage is for tort liability for physical damages to others and not for contractual liability of the insured for economic loss because the product or completed work is not that for which the damaged person bargained. The policy does not cover an accident of faulty workmanship but rather faulty workmanship which causes an accident.
Wyoming	Ricci v. New Hampshire Ins. Co., 721 P.2d 1081 (Wyo. 1986)	Homeowners sued developer after discovering water seepage in the basements of their respective homes. The homeowners' action was premised upon theories of negligence and breach of warranty. They were awarded damages for the diminution in value of their respective homes.	Exclusion applied	The language of the exclusions is not ambiguous. The policy language plainly excludes those events which gave rise to the claims for damages by the homeowners against the insured. The language of these policies excludes coverage for the insured's own negligent work and for any breach of warranty with respect to such work.

Drywall Analogies:
What is a pollutant?

Substance	Pollutant	State / Province	Citation
Acid Vapor	Yes	Kentucky	*Reliance Ins. Co. v. T.B.A., Inc.* , No. 94-0680 (W.D. Ky. 1996)
Ammonia	Yes	Colorado	*TerraMatrix, Inc. v. United States Fire Ins. Co.* , 939 P.2d 483 (Colo. Ct. App. 1997)
Ammonia	Yes	Florida	*Deni Assocs. of Fla., Inc. v. State Farm Fire & Cas. Ins. Co.* , 711 So. 2d 1135 (Fla. 1998)
Ammonia	Yes	Kentucky	*Bituminous Cas. Corp. v. RPS Co.* , 915 F. Supp. 882 (W.D. Ky. 1996)
Ammonia	Yes	Mississippi	*American States Ins. Co. v. F.H.S., Inc.* , 843 F. Supp. 187 (S.D. Miss. 1994)
Ammonia	Yes	Ohio	*Ekleberry, Inc. v. Motorists Mut. Ins. Co.* , 1992 WL 168835 (Ohio Ct. App. 1992)
Asbestos	No	California	*Flintkote Co. v. American Mut. Liab. Ins.* , No. 808-594 (Cal. Super. Ct. Aug. 17, 1993), reprinted in 7 Mealey's Ins. Litig. Rep. No. 45, Section A (Oct. 5, 1993)
Asbestos	Yes	California	*Sunset-Vine Tower, Ltd. v. Committee & Indus. Ins. Co.* , No. C 738 874 (Cal. Super. Ct. Apr. 12, 1993), reprinted in 7 Mealey's Ins. Litig. Rep. No. 29, Section G (June 1, 1993)
Asbestos	Yes	Georgia	*American States Ins. Co. v. Zippro Constr. Co.* , 455 S.E.2d 133 (Ga. Ct. App. 1995)
Asbestos	Yes	New Jersey	*Edwards & Caldwell LLC v. Gulf Ins. Co.* , 2005 WL 2090636 (D.N.J. 2005)
Asbestos	Yes	New York	*Kosich v. Metropolitan Prop. & Cas. Ins. Co.* , 626 N.Y.S.2d 618 (N.Y. App. Div. 1995)
Asbestos	No	Ohio	*Owens-Corning Fiberglas Corp. v. Allstate Ins. Co.* , 660 N.E.2d 746 (Ohio Com. Pleas Ct. 1993)
Asbestos	Yes	Oregon	*Great N. Ins. Co. v. Benjamin Franklin Fed. Sav. & Loan Ass'n* , 953 F.2d 1387 (9th Cir. 1992) (unpublished)
Bacteria -- E. Coli	Yes	California	*East Quincy Servs. Dist. v. Continental Ins. Co.* , 864 F. Supp. 976 (E.D. Cal. 1994)
Bacteria -- E. Coli	Yes	Indiana	*Employers Mut. Cas. Co. v. DFX Enters., Inc.* , No. 20D03-9505 (Ind. Super. Ct. Apr. 24, 1997), reprinted in 11 Mealey's Ins. Litig. Rep. No. 36, Section G (July 22, 1997)
Bacteria -- E. Coli	No	New York	*Eastern Mut. Ins. Co. v. Kleinke* , 739 N.Y.S.2d 657 (N.Y. App. Div. 2002) (App. Div. & trial court opinions reprinted in 16 Mealey's Ins. Litig. Rep. No. 23, Section A (April 16, 2002))
Bacteria -- Legionella Pneumophila	Yes	Minnesota	*Michigan Mut. Ins. Co. v. Mitco Inc.* , No. 98-11745 (Minn. Dist. Ct., Aug. 27, 1999), reprinted in 13 Mealey's Ins. Litig. Rep. No. 47, Section G (Oct. 19, 1999)
Bacteria -- Listeria	Yes	Wisconsin	*Landshire Fast Foods of Milwaukee, Inc. v. Employers Mut. Cas. Co.* , 676 N.W.2d 528 (Wis. Ct. App. 2004) (considered a "contaminant")
Battery Acid	Yes	Florida	*Philadelphia Indem. Ins. Co.* , 595 F. Supp. 2d 1319 (S.D. Fla. 2009)
Benzene	Yes	New York	*Gotham Ins. Co. v. GLNX, Inc.* , 1993 WL 312243 (S.D.N.Y. 1993)
Benzene	Yes	Texas	*Shell Oil Co. v. Hollywood Marine, Inc.* , 701 So. 2d 1038 (La. Ct. App. 1997)
Carbon Dioxide	No	Kentucky	*Motorists Mut. Ins. Co. v. RSJ, Inc.* , 926 S.W.2d 679 (Ky. Ct. App. 1996)
Carbon Dioxide	Yes	Massachusetts	*Essex Ins. Co. v. Tri-Town Corp.* , 863 F. Supp. 38 (D. Mass. 1994)
Carbon Dioxide	No	Wisconsin	*Donaldson v. Urban Land Interests, Inc.* , 564 N.W.2d 728 (Wis. 1997)
Carbon Monoxide	No	Colorado	*Regional Bank of Colo., N.A. v. St. Paul Fire & Marine Ins. Co.* , 35 F.3d 494 (10th Cir. 1994)

Drywall Analogies:
What is a pollutant?

Substance	Pollutant	State / Province	Citation
Carbon Monoxide	Yes	Georgia	*Auto-Owners Ins. Co. v. Reed* , 667 S.E.2d 90 (Ga. 2008)
Carbon Monoxide	No	Illinois	*American States Ins. Co. v. Koloms* , 687 N.E.2d 72 (Ill. 1997)
Carbon Monoxide	Yes	Iowa	*Bituminous Cas. Corp. v. Sand Livestock Sys., Inc.* , 728 N.W.2d 216 (Iowa 2007)
Carbon Monoxide	No	Louisiana	*Thompson v. Temple* , 580 So. 2d 1133 (La. Ct. App. 1991)
Carbon Monoxide	Yes	Maryland	*Assicurazioni Generali, S.P.A. v. Neil* , 160 F.3d 997 (4th Cir. 1998)
Carbon Monoxide	Yes	Maryland	*Bernhardt v. Hartford Fire Ins. Co.* , 648 A.2d 1047 (Md. Ct. Spec. App. 1994)
Carbon Monoxide	No	Massachusetts	*Western Alliance Ins. Co. v. Gill* , 686 N.E.2d 997 (Mass. 1997)
Carbon Monoxide	Yes	Minnesota	*Continental Cas. Co. v. Advance Terrazzo & Tile Co.* , 2005 WL 1923661 (D. Minn. 2005), aff'd, 462 F.3d 1002 (8th Cir. 2006)
Carbon Monoxide	No	New York	*Stoney Run Co. v. Prudential-LMI Commercial Ins. Co.* , 47 F.3d 34 (2d Cir. 1995)
Carbon Monoxide	No	New York	*Ruth v. Excelsior Ins. Co.* , No. 124474 (N.Y. Sup. Ct. July 26, 1994), reprinted in 8 Mealey's Ins. Litig. Rep. No. 44, Section B (Sep. 27, 1994)
Carbon Monoxide	No	Ohio	*Andersen v. Highland House Co.* , 757 N.E.2d 329 (Ohio 2001)
Carbon Monoxide	Yes	Pennsylvania	*Matcon Diamond, Inc. v. Penn Nat'l Ins. Co.* , 815 A.2d 1109 (Pa. Super. Ct. 2003)
Carbon Monoxide	Yes	Pennsylvania	*Reliance Ins. Co. v. Moessner* , 121 F.3d 895 (3d Cir. 1997)
Carbon Monoxide	No	Wisconsin	*Langone v. American Fam. Mut. Ins. Co.* , 731 N.W.2d 334 (Wis. Ct. App. 2007)
Carbon Monoxide	No	Ontario	*Zurich Ins. Co. v. 686234 Ont. Ltd.* , [2003] I.L.R. I-4137 (Ont. C.A.); leave to appeal ref'd [2003] S.C.C.A. No. 33
Carpet Glue	No	Indiana	*Freidline v. Shelby Ins. Co.* , 774 N.E.2d 37 (Ind. 2002)
Carpet Glue	Yes	Michigan	*Carpet Workroom v. Auto Owners Ins. Co.* , 2002 WL 1747884 (Mich. Ct. App. 2002)
Chemically Treated Wood Chips	Yes	Mississippi	*Acceptance Ins. Co. v. Powe Timber Co., Inc.* , 403 F. Supp. 2d 552 (S.D. Miss. 2005)

Drywall Analogies:
What is a pollutant?

Substance	Pollutant	State / Province	Citation
Chromium	Yes	Colorado	*Power Eng'g Co. v. Royal Ins. Co. of Am.* , 105 F. Supp. 2d 1196 (D. Colo. 2000)
Cleaning Solvent	Yes	Texas	*Amoco Prod. Co. v. Hydroblast Corp.* , 90 F. Supp. 2d 727 (N.D. Tex. 1999), aff'd, 226 F.3d 642 (5th Cir. 2000)
Coal Tar	Yes	Illinois	*Central Ill. Pub. Serv. Co. v. Allianz Underwriters Ins. Co.* , 608 N.E.2d 155 (Ill. App. Ct. 1992)
Cooking Grease	Yes	Louisiana	*Matheny v. Ludwig* , 742 So. 2d 1029 (La. Ct. App. 1999)
Crude Oil	Yes	New York	*Plants & Goodwin, Inc. v. St. Paul Surplus Lines Ins. Co.* , 99 F. Supp. 2d 293 (W.D.N.Y. 2000)
DDT	Yes	Connecticut	*Olin Corp. v. Insurance Co. of N. Am.* , 762 F. Supp. 548 (S.D.N.Y. 1991), aff'd, 966 F.2d 718 (2d Cir. 1992)
Deck Sealant	Yes	Washington	*Quadrant Corp. v. American State Ins. Co.* , 110 P.3d 733 (Wash. 2005)
Defoliant	Yes	Washington	*United States Fid. & Guar. Co. v. Johnson* , 1992 WL 1468836 (E.D. Wash. 1992)
Diesel Fuel	Yes	Michigan	*Watson v. Travelers Indem. Co.* , 2005 WL 839504 (Mich. Ct. App. 2005)
Diesel Fuel	Yes	Montana	*Montana Petroluem Tank Release Comp. Bd. v. Crumleys, Inc.* , 174 P.3d 948 (Mont. 2008)
Dioxin	Yes	Missouri	*Charter Oil Co. v. American Employers' Ins. Co.* , 69 F.3d 1160 (D.C. Cir. 1995)
Dust -- Cement	Yes	South Dakota	*South Dakota State Cement Plant Comm'n v. Wausau Underwriting Ins. Co.* , 616 N.W.2d 397 (S.D. 2000)
Dust -- Cement	Yes	Texas	*Mt. Hawley Ins. Co. v. Wright Materials, Inc.* , 2005 WL 2805565 (N.D. Tex. 2005)
Dust -- Cement	Yes	Texas	*Gerling Am. Ins. Co. v. Lafarge Corp.* , 1997 U.S. Dist. LEXIS 23917 (S.D. Tex. 1997)
Dust -- Coal	Yes	Kentucky	*United States Fid. & Guar. Co. v. Star Fire Coals, Inc.* , 856 F.2d 31 (6th Cir. 1988)
Dust -- Coal	No	Alberta	*Palliser Reg'l Sch. Div. No. 26 v. Aviva Scottish & York Ins. Co.* , [2004] A.J. No. 1356 (Q.B.) (QL)
Dust -- Compost	Yes	California	*Cold Creek Compost, Inc. v. State Farm Fire & Cas. Co.* , 68 Cal. Rptr. 3d 216 (Cal. Ct. App. 2007)
Dust -- Concrete	Yes	Hawaii	*Allen v. Scottsdale Ins. Co.* , 307 F. Supp. 2d 1170 (D. Haw. 2004)
Dust -- Construction	Yes	New York	*Henry Modell & Co. v. General Ins. Co. of Trieste & Venice* , 597 N.Y.S. 2d 75 (N.Y. App. Div. 1993)
Dust -- Construction	Yes	Virgin Islands	*Devcon Int'l Corp. v. Reliance Ins. Co.* , 2007 WL 3124767 (D.V.I. 2007)
Dust -- PVC	Yes	Louisiana	*Crabtree v. Hayes-Dockside, Inc.* , 612 So. 2d 249 (La. Ct. App. 1992)
Excavated Fill	No	British Columbia	*Great W. Dev. Marine Corp. v. Canadian Sur. Co.* (2000), 19 C.C.L.I. (3d) 52 (B.C.S.C.)
Feces	Yes	Florida	*Philadelphia Indem. Ins. Co.* , 595 F. Supp. 2d 1319 (S.D. Fla. 2009)
Fill Material (Dirt & Rocks)	Yes	California	*Ortega Rock Quarry v. Golden Eagle Ins., Co.* , 46 Cal. Rptr. 3d 517 (Cal. Ct. App. 2006)
Flood Water	No	Virginia	*State Auto Pro. & Cas. Ins. Co. v. Gorsuch* , 323 F. Supp. 2d 746 (W.D. Va. 2004)
Formic Acid	No	Kansas	*Regent Ins. Co. v. Holmes* , 835 F. Supp. 579 (D. Kan. 1993)
Foundry Sand	Yes	Iowa	*A.Y. McDonald Indus., Inc. v. Insurance Co. of N. Am.* , 842 F. Supp. 1166 (N.D. Iowa 1993)

Drywall Analogies:
What is a pollutant?

Substance	Pollutant	State / Province	Citation
Foundry Sand	Yes	Ohio	*Employers Ins. of Wausau v. Amcast Indus. Corp.* , 709 N.E.2d 932 (Ohio Ct. App. 1998)
Fumes -- Asphalt & Paper Production	Yes	Michigan	*IKO Monroe, Inc. v. Royal & SunAlliance Ins. Co. of Can., Inc.* , 2001 WL 1568674 (D. Del. 2001)
Fumes -- Chemical	Yes	Florida	*City of St. Petersburg v. United States Fid. & Guar. Co.* , No. 92-1224 (M.D. Fla. Aug. 15, 1994), reprinted in 8 Mealey's Ins. Litig. Rep. No. 43, Section E (Sept. 20, 1994)
Fumes -- Chemical	Yes	Minnesota	*Lyman v. Stuart Corp.* , 1996 WL 229259 (Minn. Ct. App. 1996)
Fumes -- Chemical	Yes	Mississippi	*American States Ins. Co. v. Nethery* , 79 F.3d 473 (5th Cir. 1996)
Fumes -- Chemical	Yes	New York	*B.U.D. Sheetmetal, Inc. v. Massachusetts Bay Ins. Co.* , No. 3513-93 (N.Y. Sup. Ct. Mar. 21, 1995), reprinted in 9 Mealey's Ins. Litig. Rep. No. 20, Section C (Mar. 28, 1995)
Fumes -- Chemical	Yes	Ohio	*Zell v. Aetna Cas. & Sur. Co.* , 683 N.E.2d 1154 (Ohio Ct. App. 1996)
Fumes -- Chemical	Yes	Pennsylvania	*Brown v. American Motorists Ins. Co.* , 930 F. Supp. 207 (E.D. Pa. 1996), aff'd, 111 F.3d 125 (3d Cir.), cert. denied, 522 U.S. 950 (1997)
Fumes -- Chemical	Yes	Texas	*National Union Fire Ins. Co. of Pittsburgh, Pa. v. CBI Indus.* , 907 S.W.2d 517 (Tex. 1995)
Fumes -- Chemical	Yes	Washington	*Cook v. Evanson* , 920 P.2d 1223 (Wash. Ct. App. 1996)
Fumes -- Compost	Yes	California	*Cold Creek Compost, Inc. v. State Farm Fire & Cas. Co.* , 68 Cal. Rptr. 3d 216 (Cal. Ct. App. 2007)
Fumes -- Concrete Curing Agent	Yes	Pennsylvania	*Madison Constr. Co. v. Harleysville Mut. Ins. Co.* , 735 A.2d 100 (Pa. 1999)
Fumes -- Drain Cleaner	Yes	Hawaii	*Apana v. TIG Ins. Co.* , 504 F. Supp. 2d 998 (D. Haw. 2007)
Fumes -- Floor Sealant	No	New Jersey	*Nav-Its, Inc. v. Selective Ins. Co. of Am.* , 869 A.2d 929 (N.J. 2005)
Fumes -- Floor Sealant	Yes	Virginia	*Firemen's Fund Ins. Co. of Wash., D.C. v. Kline & Son Cement Repair, Inc.* , 474 F. Supp. 2d 779 (E.D. Va. 2007)
Fumes -- Furnace Exhaust	Yes	Ohio	*Park-Ohio Indus., Inc. v. Home Indem. Co.* , 975 F.2d 1215 (6th Cir. 1992)
Fumes -- Gasoline	Yes	Prince Edward Island	*D.P. Murphy Inc. v. Laurentian Cas. Co. of Can.* (1992), 14 C.C.L.I. (2d) 209 (P.E.I.S.C.T.D.)

Drywall Analogies:
What is a pollutant?

Substance	Pollutant	State / Province	Citation
Fumes -- Manganese Welding	No	Maryland	*Clendenin Bros., Inc. v. United States Fire Ins. Co.* , 889 A.2d 387 (Md. 2005)
Fumes -- Paint	Yes	Maryland	*Nationwide Mut. Ins. Co. v. DNS Auto., Inc.* , No. AMD 99-2928 (D. Md. Mar. 21, 2000), reprinted in 14 Mealey's Ins. Litig. Rep. No. 21, Section B (Apr. 4, 2000)
Fumes -- Roofing Product	No	Maine	*Nautilus Ins. Co. v. Jabar* , 188 F.3d 27 (1st Cir. 1999)
Fumes -- Slaughterhouse	Yes	California	*Zacky Farms v. Central Nat'l Ins. Co. of Omaha,* 1996 WL 436515, 92 F.3d 1195 (9th Cir. 1996) (unpublished)
Fumes -- Slaughterhouse	Yes	Nebraska	*Kruger Commodities, Inc. v. United States Fid. & Guar. Co.* , 923 F. Supp. 1474 (M.D. Ala. 1996)
Gasoline	No	Arkansas	*Anderson Gas & Propane, Inc. v. Westport Ins. Corp.* , 140 S.W.3d 504 (Ark. Ct. App. 2004)
Gasoline	Yes	California	*Legarra v. Federated Mut. Ins. Co.* , 42 Cal. Rtpr. 2d 101 (Cal. Ct. App. 1995)
Gasoline	Yes	Georgia	*Truitt Oil & Gas Co. v. Ranger Ins. Co.* , 498 S.E.2d 572 (Ga. Ct. App. 1998)
Gasoline	Yes	Illinois	*Millers Mut. Ins. Ass'n of Ill. v. Graham Oil Co.* , 668 N.E.2d 223 (Ill. App. Ct. 1996)
Gasoline	Yes	Kansas	*Crescent Oil Co., Inc. v. Federated Mut. Ins. Co.* , 888 P.2d 869 (Kan. Ct. App. 1995)
Gasoline	No	Mississippi	*Harrison v. R.R. Morrison & Son, Inc.* , 862 So. 2d 1065 (La. Ct. App. 2003)
Gasoline	No	Missouri	*Hocker Oil Co. v. Baker-Phillips-Jackson, Inc.* , 997 S.W.2d 510 (Mo. Ct. App. 1999)
Gasoline	Yes	Pennsylvania	*Wagner v. Erie Ins. Co.* , 801 A.2d 1226 (Pa. Super. Ct. 2002), aff'd, 847 A.2d 1274 (Pa. 2004)
Gasoline	No	Texas	*Williams v. Brown's Dairy* , 2003 WL 22717718 (E.D. La. 2003)
Heating Oil	Yes	Massachusetts	*McGregor v. Allamerica Ins. Co.* , 868 N.E.2d 1225 (Mass. 2007)
Heating Oil	Yes	Massachusetts	*Nascimento v. Preferred Mut. Ins. Co.* , 478 F. Supp. 2d 143 (D. Mass. 2007), aff'd on other grounds, 513 F.3d 273 (1st Cir. 2008)
Heating Oil	Yes	New York	*Bruckner Realty, LLC v. County Oil Co.* , 816 N.Y.S.2d 694 (N.Y. Sup. Ct. 2006)
Heating Oil	Yes	Ohio	*Este Oils Co. v. Federated Ins. Co.* , 724 N.E.2d 854 (Ohio Ct. App. 1999)
Heating Oil	Yes	Pennsylvania	*Atlantic Cas. Ins. Co. v. Epstein* , 2004 WL 2075038 (E.D. Pa. 2004)
Heating Oil	No	Newfoundland	*Harvey Oil Ltd. v. Lombard Gen. Ins. Co. of Can.* , [2003] N.J. No. 273 (T.D.) (QL), aff'd [2004] N.J. No. 47 (C.A.) (QL)
Hydrogen Sulfide Gas	Yes	Mississippi	*United States Fid. & Guar. Co. v. T. K. Stanley, Inc.* , 764 F. Supp. 81 (S.D. Miss. 1991)
Industrial Plant Emissions	Yes	Minnesota	*Employers Mut. Cas. Co. v. Industrial Rubber Products, Inc.* , 2006 WL 453207 (D. Minn. 2006)
Insecticide	Yes	Florida	*Deni Assocs. of Fla., Inc. v. State Farm Fire & Cas. Ins. Co.* , 711 So. 2d 1135 (Fla. 1998)
Insecticide	Yes	Pennsylvania	*Prudential-LMI Commercial Ins. Co. v. Meadowood Condominium Ass'n* , 1992 WL 189490 (E.D. Pa. 1992)

Drywall Analogies:
What is a pollutant?

Substance	Pollutant	State / Province	Citation
Kidney Dialysis Waste (Lead)	Yes	Oklahoma	*Bituminous Cas. Corp. v. Cowen Constr., Inc.* , 55 P.3d 1030 (Okla. 2002)
Kitchen Grease	Yes	Missouri	*Boulevard Inv. Co. v. Capitol Indem. Corp.* , 27 S.W.3d 856 (Mo. Ct. App. 2000)
Lead	Yes	Ohio	*Cincinnati Ins. Co. v. Thoma* s, 2006 WL 3569195 (Ohio Ct. App. 2006)
Lead Paint	No	Alabama	*Porterfield v. Audubon Indem. Co.* , 856 So. 2d 789 (Ala. 2002)
Lead Paint	No	Connecticut	*Danbury Ins. Co. v. Novella* , 727 A.2d 279 (Conn. Super. Ct. 1998)
Lead Paint	No	Illinois	*Insurance Co. of Ill. v. Stringfield* , 685 N.E. 2d 980 (Ill. App. Ct. 1997)
Lead Paint	No	Maryland	*Sullins v. Allstate Ins. Co.* , 667 A.2d 617 (Md. 1995)
Lead Paint	Yes	Massachusetts	*United States Liab. Ins. Co. v. Bourbeau* , 49 F.3d 786 (1st Cir. 1995)
Lead Paint	No	Massachusetts	*Atlantic Mut. Ins. Co. v. McFadden* , 595 N.E.2d 762 (Mass. 1992)
Lead Paint	Yes	Missouri	*Heringer v. American Fam. Mut. Ins. Co.* , 140 S.W.3d 100 (Miss. Ct. App. 2004)
Lead Paint	Yes	Missouri	*Hartford Underwriter's Ins. Co., v. Estate of Turks* , 206 F. Supp. 2d 968 (E.D. Mo. 2002)
Lead Paint	No	New Jersey	*Byrd v. Blumenreich* , 722 A.2d 598 (N.J. Super. Ct. App. Div. 1999)
Lead Paint	No	New York	*Westview Assocs. v. Guaranty Nat'l Ins. Co.* , 740 N.E.2d 220 (N.Y. 2000)
Lead Paint	No	Ohio	*Wood v. Auto-Owners Mut. Ins. Co.* , No. 99-06-068 (Ohio Com. Pleas Ct. Oct. 18, 2000), reprinted in 15 Mealey's Ins. Litig. Rep. No. 1, Section E (Nov. 1, 2000)
Lead Paint	Yes	Pennsylvania	*Lititz Mut. Ins. Co. v. Steely* , 785 A.2d 975 (Pa. 2001)
Lead Paint	No	Virginia	*Unison Ins. Co. v. Schulwolf* , 2000 WL 33340659 (Va. Cir. Ct. 2000)
Lead Paint	No	Virginia	*Monticello Ins. Co. v. Baecher* , 857 F. Supp. 1145 (E.D. Va. 1994)
Lead Paint	Yes	Wisconsin	*Peace v. Northwestern Nat'l Ins. Co.* , 596 N.W.2d 429 (Wis. 1999)
Liquid Cement Cleaner	Yes	Kansas	*Atlantic Ave. Assocs. v. Central Solutions, Inc.* , 24 P.3d 188 (Kan. Ct. App. 2001)
Liquid Chlorine	Yes	Ohio	*United States Fid. & Guar. Co. v. Jones Chems., Inc.* , 1999 WL 801589, 194 F.3d 1315 (6th Cir. 1999)
Manure	Yes	Iowa	*Weber v. IMT Ins. Co.* , 462 N.W.2d 283 (Iowa 1990)
Manure	Yes	New York	*Space v. Farm Family Mut. Ins. Co.* , 652 N.Y.S.2d 357 (N.Y. App. Div. 1997)
Manure	Yes	Wisconsin	*Norks v. American Family Mut. Ins. Co.* , 551 N.W.2d 62 (Wis. Ct. App. 1996) (unpublished)
Mastic Remover	No	Pennsylvania	*Island Assoc., Inc. v. Eric Group, Inc.* , 894 F. Supp. 200 (W.D. Pa. 1995)
Mercury	Yes	Illinois	*Economy Preferred Ins. Co. v. Grandadam* , 656 N.E.2d 787 (Ill. App. Ct. 1995)
Mercury	Yes	Nebraska	*Ferrell v. State Farm Ins. Co.* , 2003 WL 21058165 (Neb. Ct. App. 2003)
Methane Gas	Yes	Ohio	*Air Prods. & Chems., Inc. v. Indiana Ins. Co.* , 2000 WL 955600 (Ohio Ct. App. 1999)
Methane Gas	Yes	Pennsylvania	*O'Brien Energy Sys., Inc. v. American Employers' Ins. Co.* , 629 A.2d 957 (Pa. Super. Ct. 1993)
Methanol, Lubrizol	Yes	Alberta	*Medicine Hat (City) v. Continental Cas. Co.* , [2002] A.J. No. 350 (Q.B.) (QL), aff'd [2004] A.J. No. 682 (C.A.) (QL)

Drywall Analogies:
What is a pollutant?

Substance	Pollutant	State / Province	Citation
Methyl Parathion	Yes	Alabama	*Haman, Inc. v. St. Paul Fire & Marine Ins. Co.* , 18 F. Supp. 2d 1306 (N.D. Ala. 1998)
Mine Tailings	Yes	Colorado	*Leadville Corp. v. United States Fid. & Guar. Co.* , No. 93 N 2002 (D. Colo. May 3, 1994), reprinted in 8 Mealey's Ins. Litig. Rep. No. 32, Section B (June 28, 1994)
Mine Tailings	Yes	Idaho	*Monarch Greenback, LLC v. Monticello Ins. Co.* , 118 F. Supp. 2d 1068 (D. Idaho 1999)
Mining Waste	Yes	New York	*Gold Fields Am. Corp. v. Aetna Cas. & Sur. Co.* , 744 N.Y.S.2d 395 (N.Y. App. Div. 2002)
Mold	No	California	*Johnson v. Clarendon Ins. Co.* , 2009 WL 252619 (Cal. Ct. App 2009) (unpublished)
Mold	Yes	Missouri	*American W. Home Ins. Co. v. Utopia Acquisition L.P.* , 2009 WL 792483 (W.D. Mo. 2009)
Mold	Yes	Texas	*Lexington Ins. Co. v. Unity/Waterford-Fair Oaks, Ltd.* , 2002 WL 356756 (N.D. Tex 2002)
Mosquito Abatement Fogging	No	Kansas	*Westchester Fire Ins. Co. v. City of Pittsburg, Kan.* , 791 F. Supp. 836 (D. Kan. 1992)
Muriatic Acid	No	Missouri	*Sargent Constr. Co. v. State Auto Ins. Co.* , 23 F.3d 1324 (8th Cir. 1994)
Mustard Gas Agents	No	Louisiana	*North Am. Specialty Ins. Co. v. Georgia Gulf Corp.* , 99 F. Supp. 2d 726 (M.D. La. 2000)
Natural Gas	No	Pennsylvania	*Municipality of Mt. Lebanon v. Reliance Ins. Co.* , 778 A.2d 1228 (Pa. Super. Ct. 2001)
Naturally Occurring Radioactive Material	Yes	Mississippi	*United States Fid. & Guar. Co. v. B&B Oil Well Serv., Inc.* , 910 F. Supp. 1172 (S.D. Miss. 1995)
Nitrogen Dioxide	Yes	Minnesota	*League of Minn. Cities Ins. Trust v. City of Coon Rapids* , 446 N.W.2d 419 (Minn. Ct. App. 1989)
Nuclear Waste	Yes	Texas	*Constitution State Ins. Co. v. Iso-Tex, Inc.* , 61 F.3d 405 (5th Cir. 1995)
PCB	Yes	California	*Simpson Paper Co. v. Central Nat'l Ins. of Omaha* , 1994 WL 672466 (W.D. Wash. 1994)
PCB	Yes	Illinois	*Outboard Marine Corp. v. Liberty Mut. Ins. Co.* , 607 N.E.2d 1204 (Ill. 1992)
PCB	Yes	Indiana	*Cincinnati Ins. Co. v. Flanders Elec. Motor Serv.* , 1993 WL 764462 (S.D. Ind. 1993), aff'd, 40 F.3d 146 (7th Cir. 1994)
PCB	Yes	Louisiana	*Gregory v. Tennessee Gas Pipeline Co.* , 948 F.2d 203 (5th Cir. 1991)
PCB	Yes	Massachusetts	*Lumbermens Mut. Cas. Co. v. Belleville Indus., Inc.* , 555 N.E.2d 568 (Mass. 1990), cert. denied, 502 U.S. 1073 (1992)
PCB	Yes	Michigan	*Tecumseh Prods. Co. v. American Employers Ins. Co.* , 1998 WL 63179, 577 N.W.2d 386 (Wis. Ct. App. 1998) (unpublished)
PCB	Yes	North Carolina	*Peerless Ins. Co. v. Strother* , 765 F. Supp. 866 (E.D.N.C. 1990)
PCB	Yes	Texas	*In re Texas E. Transmission Corp. PCB Contamination Ins. Coverage Litig.* , 870 F. Supp. 1293 (E.D. Pa. 1992), aff'd, 995 F.2d 219 (3d Cir. 1993)

Drywall Analogies:
What is a pollutant?

Substance	Pollutant	State / Province	Citation
PCB	Yes	Utah	*Hartford Accident & Indem. Corp. v. United States Fid. & Guar. Co.* , 962 F.2d 1484 (10th Cir.), cert. denied, 506 U.S. 955 (1992)
PCE	Yes	California	*Lewis v. Hartford Cas. Ins. Co.* , 2006 WL 249516 (N.D. Cal. 2006)
Pesticide	No	California	*MacKinnon v. Truck Ins. Exch.* , 73 P.3d 1205 (Cal. 2003)
Pesticide	Yes	Maryland	*Home Exterminating Co. v. Zurich-American Ins. Group* , 921 F. Supp. 318 (D. Md. 1996)
Petroleum	Yes	New York	*Tartan Oil Corp. v. Clark* , 684 N.Y.S.2d 600 (N.Y. App. Div. 1999)
Phenol Gas	Yes	Texas	*Certain Underwriters at Lloyd's, London v. C.A. Turner Constr. Co.* , 112 F.3d 184 (5th Cir. 1997)
Radioactive Material	Yes	Kentucky	*Sunny Ridge Enters., Inc. v. Fireman's Fund Ins. Co.* , 132 F. Supp. 2d 525 (E.D. Ky. 2001)
Radioactive Material	No	Minnesota	*Minnesota Mining & Mfg. Co. v. Walbrook Ins. Co.* , 1996 WL 5787 (Minn. Ct. App. 1996)
Radioactive Waste	Yes	Ohio	*Borden, Inc. v. Affiliated FM Ins. Co.* , 682 F. Supp. 927 (S.D. Ohio 1987), aff'd, 865 F.2d 1267 (6th Cir.), cert. denied, 493 U.S. 817 (1989)
Salt Cake (aluminum smelting residue)	Yes	Missouri	*Continental Ins. Co. v. Shapiro Sales Co.* , 2005 WL 2346952 (E.D. Mo. 2005)
Salt Water	Yes	Texas	*Mesa Operating Co. v. California Union Ins. Co.* , 986 S.W.2d 749 (Tex. Ct. App. 1999)
Sandblasting Residue	Yes	British Columbia	*Dave's K. & K. Sandblasting (1988) Ltd. v. Aviva Ins. Co. of Can.* [2007] B.C.J. No. 1203 (B.C.S.C.) (Q.L.)
Sedimentation	Yes	North Carolina	*Pennsylvania Nat'l Mut. Cas. Ins. Co. v. Triangle Paving, Inc.* , 973 F. Supp. 560 (E.D.N.C. 1996), aff'd, 121 F.3d 699 (4th Cir. 1997) (unpublilshed)
Sewage	No	Alabama	*United States Fid. & Guar. Co. v. Armstrong* , 479 So. 2d 1164 (Ala. 1985)
Sewage	No	Arkansas	*Minerva Enters., Inc. v. Bituminous Cas. Corp.* , 851 S.W.2d 403 (Ark. 1993)
Sewage	Yes	Colorado	*Blackhawk-Central City Sanitation Dist. v. American Guarantee & Liab. Ins. Co.* , 214 F.3d 1183 (10th Cir. 2000)
Sewage	Yes	Florida	*Philadelphia Indem. Ins. Co.* , 595 F. Supp. 2d 1319 (S.D. Fla. 2009)
Sewage	Yes	Kansas	*City of Salina, Kansas v. Maryland Cas. Co.* , 856 F. Supp. 1467 (D. Kan. 1994)
Sewage	Yes	Michigan	*City of Grosse Pointe Park v. Michigan Mun. Liab. & Prop. Pool,* 702 N.W.2d 106 (Mich. 2005)
Sewage	Yes	Michigan	*Michigan Mun. Risk Mgmt. Auth. v. Seaboard Sur. Co.* , 2003 WL 21854655 (Mich. Ct. App. 2003)
Sewage	Yes	New Hampshire	*Titan Holdings Syndicate, Inc. v. City of Keene, N.H.* , 898 F.2d 265 (1st Cir. 1990)
Sewage	Yes	Oregon	*Pacific Corp. v. Wausau* , No. 93-1569 (Or. Dist. Ct. July 5, 1994), reprinted in 8 Mealey's Ins. Litig. Rep. No. 35, Section F (July 19, 1994)
Sewer Gas	Yes	Minnesota	*Johnson v. Woodstock Homeowners' Ass'n II* , 1999 WL 540724 (Minn. Ct. App. 1999)
Silica	Yes	California	*Garamendi v. Godlen Eagle Ins. Co.* , 25 Cal. Rptr. 3d 642 (Cal. Ct. App. 2005)

Drywall Analogies:
What is a pollutant?

Substance	Pollutant	State / Province	Citation
Silica	Yes	Florida	*American Home Assurance Co. v. Devcon Int'l, Inc.,* 1993 WL 401872 (S.D. Fla. 1993), aff'd, 28 F.3d 118 (11th Cir. 1994)
Silica	Yes	Texas	*Mt. Hawley Ins. Co. v. Wright Materials, Inc.* , 2005 WL 2805565 (N.D. Tex. 2005)
Skunk Spray	Yes	Massachusetts	*Reavey v. Hingham Mut. Fire Ins. Co.* , No. 9657CV07 (Mass. Super. Ct. Jan. 7, 1997), reprinted in 11 Mealey's Ins. Litig. Rep. No. 13, Section B (Feb. 4, 1997)
Sludge	Yes	Massachusetts	*American Employers' Ins. Co. v. Hoyt & Worthen Tanning Corp.* , No. 87-4249 (Mass. Sup. Ct. May 24, 1988)
Sludge	Yes	Missouri	*Casualty Indem. Exch. v. City of Sparta* , 997 S.W.2d 545 (Mo. Ct. App. 1999)
Smoke	Yes	Georgia	*Perkins Hardwood Lumber Co. v. Bituminous Cas. Corp.* , 378 S.E.2d 407 (Ga. Ct. App. 1989)
Smoke	No	Kansas	*Associated Wholesale Grocers, Inc. v. Americold Corp.* , 934 P.2d 65 (Kan. 1997)
Smoke & Odor Eliminator Spray	Yes	Texas	*Zaiontz v. Trinity Universal Ins. Co.* , 87 S.W.3d 565 (Tex. Ct. App. 2002)
Soil Fumigant	No	Indiana	*Great Lakes Chem. Corp. v. Northwestern Nat'l Ins. Co. of Milwaukee* , 638 N.E.2d 847 (Ind. Ct. App. 1994)
Soot	Yes	Missouri	*Triad Mfg., Inc. v. American Motorists Ins. Co.* , No. 4:99 CV 0286 (E.D. Mo. 1999), reprinted in 14 Mealey's Ins. Litig. Rep. No. 4, Section E (Nov. 23, 1999)
Storm Run-Off Sedimentation	Yes	Georgia	*Essex Ins.Co. v. H & H Land Dev. Corp.* , 525 F. Supp. 2d 1344 (M.D. Ga. 2007)
Styrene Vapors	Yes	California	*Hydro Sys., Inc. v. Continental Ins. Co.* , 929 F.2d 472 (9th Cir. 1991)
Sulphuric Acid	Yes	Tennessee	*Sulphuric Acid Trading Co., Inc. v. Greenwich Ins. Co.* , 211 S.W.3d 243 (Tenn. Ct. App. 2006)
TCE	Yes	Michigan	*Harrow Prods., Inc. v. Liberty Mut. Ins. Co.* , 64 F.3d 1015 (6th Cir. 1995)
TCE	Yes	Minnesota	*Bituminous Cas. Corp. v. Tonka Corp.* , 9 F.3d 51 (8th Cir. 1993), cert. denied, 511 U.S. 1083 (1994)
Titanium Tetrachloride	No	Georgia	*Kerr-McGee v. Georgia Cas. & Sur. Co.* , 568 S.E.2d 484 (Ga. Ct. App. 2002)
Vegetable Brine	Yes	California	*Oregon Mut. Ins. Co. v. Ripon Pac. Inc.* , No. 212735 (Cal. Super. Ct. Aug. 27, 1992), reprinted in 7 Mealey's Ins. Litig. Rep. No. 7, Section E (Dec. 15, 1992)
Xylene	Yes	Minnesota	*American States Ins. Co. v. Technical Surfacing, Inc.* , 50 F. Supp. 2d 888 (D. Minn. 1999)
Xylene	Yes	Nebraska	*Cincinnati Ins. Co. v. Becker Warehouse, Inc.* , 635 N.W.2d 112 (Neb. 2001)